

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 2561 of 2018
Date of first hearing : 24.04.2019
Date of decision : 30.05.2019

Himanshu Jain
R/o B-172-A, Sushant Lok-I,
Gurugram-122009

...Complainant

Versus

CHD Developers Ltd.
Office: SF-16-17, 1st floor,
Madame Bhikaji Cama Bhawan,
11 Bhikaji Cama Place,
New Delhi – 110066

...Respondent

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Arhant Kumar Jain AR on behalf
of complainant

Advocate for the complainant

Ms. Mani Mathur, proxy counsel
for Shri Anup Gupta

Advocate for the respondent

ORDER

1. A complaint dated 14.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) rules, 2017 by the complainant Mr. Himanshu Jain against CHD Developers Ltd., on account of violation of clause 13 of the apartment buyer's agreement executed on 13.12.2012 for unit no. T06-09/02, tower- T06 admeasuring 1633 sq. ft. in the project "CHD 106 Golf Avenue" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.
2. Since, the apartment buyer's agreement dated 13.12.2012 has been executed prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the penal proceedings cannot be initiated retrospectively for contravention of any legal provision. Hence, keeping in view the facts of the case and submissions made by both the parties, the authority has decided to treat this complaint as an application to issue directions for non-compliance of statutory

obligations by the promoters under section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

- Registered/ not registered : Not registered
- **DTCP license:** 69 of 2012 valid upto 02.07.2016
- **Nature of real estate project :** Residential group housing colony

1.	Name and location of the project	"CHD 106 Golf Avenue", sector - 106
2.	Unit no.	T06-09/02, tower-T06
3.	Unit area	1633 sq.ft
4.	DTCP license	69 of 2012 valid upto 02.07.2016
5.	Nature of real estate project	Residential group housing colony
6.	Registered/ not registered	Registered
7.	RERA registration no.	08 of 21.02.2019
8.	Date of apartment buyer's agreement	13.12.2012
9.	Total consideration (as per allotment letter dated 06.10.2012)	Rs.86,29,899
10.	Total amount paid by the complainant(as per payment receipts summary page no.20) as alleged by complainant	Rs.81,68,698/- (including TDS)

11.	Payment plan	Construction linked plan
12.	Due date of delivery of possession (Clause 13) of apartment buyer's agreement: <i>"42 months from date of execution of agreement plus 6 months of additional delay"</i>	13.12.2016
13.	Delay for number of months/ years	2 years 5 months 17 days
14.	Allotment letter	06.10.2012
15.	Re- allotment letter	19.01.2013

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. An apartment buyer's agreement dated 13.12.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 13.12.2016.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondent has filed the reply and the reply has been perused.

Facts of the complaint:

6. The complainant submitted that he booked a residential flat in the project of the respondent "106 Golf Avenue" at sector-106, Gurugram, Haryana under the Apartment buyer's agreement dated 13.12.2012.
7. The complainant submitted that after collecting 95% payment of the basic sale price including car parking charges with service tax and IDC/EDC charges in full, amounting to Rs.81,23,154/- by July 2016. In addition respondent has deposited a sum of Rs. 45,544/- as TDS also.
8. The complainant submitted that complainant kept commitments strictly according to the apartment buyer's agreement, the respondent has failed to deliver the flat booked with him till now though the delivery date committed by him vide clause 13 of apartment buyer's agreement was 30th June, 2016.
9. The complainant submitted that the respondent suspended construction for the last two years without any notice to the

buyer. And, the builder has not registered its project with HARERA so far though it is mandatory under the Act.

10. The complainant submitted that though respondent has charged in full EDC/IDC from the complainant, but did not deposit the same with the government.

11. The complainant submitted that a group of buyers since 2017, compelled the respondent to hold meetings at site. In the last meeting held on 4th August 2018 declared that he has arranged a loan of Rs.20 Crores to pay an instalment of EDC/IDC as per the scheme announced by the government and also to start construction activity in full swing. He also promised that after Dussehra, a contingent of 400 workers will be deployed at the site to complete the delivery of flats in tower 1,4,6&7 by April 2019.

12. The complainant submitted that following complaints against respondent have been made by various buyers of this project with HARERA.

S. no.	Complaint No.	Complainant	Date of judgment
1	RERA-GRG-307	Mr.Raj Singh Rathi	16.10.2018
2	RERA-GRG-396	Mr. Amit Sinha	13.09.2018
3	RERA-GRG-397	Ms.Roshni Alimchandani	13.09.2018
4	RERA-GRG-398	Mr.Neeraj Bhalla	13.09.2018
5	RERA-GRG-345	Mr.Atheeth Mathias	13.09.2018

13. Issues raised by the complainants:

- i. Whether the respondent does not seem to be interested in completing the project even after receiving 95% of the basic

selling price and IDC/EDC charges in full even after 3 years of the committed date of delivery ?

- ii. Whether the respondent should be made to pay penalty to the complainant for the delay giving possession of the flat for than 3 years?
- iii. Whether the respondent wrongfully demanded the car parking charges and be refunded back to complainant with 18% interest?
- iv. Whether the CHD developers Ltd. are avoiding registration under HRERA ?

14. Relief sought:

- i. If the respondent does not comply and deliver as per directions of Hon'ble HRERA court, penalty of 10% as estimated cost of the project shall be imposed on the respondent and under section 59(1) read with section 3(1) of the Real Estate (regulation and development) act. 2016, particularly the proviso to section 3(1) which mandates the promoters of ongoing project to register within the 3 months from the date of commencement of the act

and the said respondent be directed to register forthwith in a stipulated time.

Respondent's reply

15. The respondent submitted that at the outset it is stated that there is no merit whatsoever in the complaint filed and the same is liable to be dismissed with costs. Save as otherwise specifically admitted in the present reply, it is stated that the contents of the complaint are wrong and are denied.
16. The respondent submitted that the present reply of behalf of the answering respondent is being signed by Mr. Swatantra Saxena, Manager -Legal, who has been duly authorized by the Board of Directors of respondent company vide its board resolution dated 12.09.2018
17. The respondent submitted that the complainant has misdirected himself in filing the above captioned complaint before this Ld. authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this ld. authority.

18. The respondent submitted that complainant is not entitled for refund of money along with interest. In actual fact, the real purpose of the complaint is to seek refund of money with interest because of a severe slump / decline in the prices of properties. The complainant who was merely speculating in the property market, realizing that they will not be able to make a profit on their investment /the value of the investment is less because of the crash of the prices of properties in the real estate market, is seeking to pass on his loss to the respondent. If, there had been an increase in the prices of properties, which was the trend at the time of execution of the apartment buyer's agreement, the complainant would have never sought return of money.

19. The parties had executed an apartment buyer's agreement on 13.12.2012. In terms of the apartment buyer's agreement, the complainant had agreed to purchase the apartment bearing no. T06-09/02 in Tower no. 06 of the residential group housing colony named "106 Golf Avenue" in sector-106, Gurugram, Haryana for a total consideration amount of Rs.86,29,899/- excluding other applicable taxes and charges.

20. The respondent submitted that it was agreed in terms of clause 13 of the apartment buyer's agreement that the possession of the apartment would be given to the Complainant within a period of 42 months from the date of the execution of the apartment buyer's agreement and that the respondent would be entitled to an additional period of 06 months. It is further provided that the time period for delivery of possession was "tentative" and was subject to force majeure events, court indulgence, timely payment of all installments and the formalities for completion, as provided in the apartment buyer's agreement.
21. The respondent respectfully submits that the complainant has sought to wrongly portray as if no work has been carried out and that the construction is far from completion. In fact, to the contrary, the construction is almost complete and mostly only the some interior and finishing work is required to be completed and the respondent submits that the same is in progress or all most completed.

22. The respondent submitted that it is stated that the 42 months period provided for delivery of possession expired on 13.06.2016. The additional period of 06 months expired on 13.12.2016. After the execution of the apartment buyer's agreement, the respondent had received a letter bearing no. HSPCB/GRN/2015/516 dated 01.05.2015 from the Regional Office North, Haryana State Pollution Control Board, informing the opposite party that "vide order dated 07.04.2015 and 10.04.2015 in original application No.21 of 2014 titled as "*VardhamanKaushik Vs. Union of India*", the Hon'ble National Green Tribunal, New Delhi has taken very serious views regarding pollution resulting from construction and other allied activities emitting dust emission and directed to stoppage of construction activities of all construction sites and in pursuance/compliances thereto of said letter/order the respondent had to stop all the construction activities between the period May, 2015 to August, 2015. Thus, the construction could not be carried out for a period of about 4-6 months because of the order passed by the Hon'ble N.G.T. and compliance thereto in pursuance of said letter dated

01.05.2015. This period is also therefore to be excluded. Further, due to demonetization that took place in India in November 2016, a situation of financial crisis had arisen which was not only suffered by the respondent but in fact by every person in the country. The sudden scarcity of valid currency notes and consequent lack of funds affected the construction activity at site which only got resolved after a period of 2 (two) months. Moreover, the office of the District Town Planner Enforcement on 10.11.2017 had again directed stoppage of all construction activity.

23. The respondent submitted that the construction has slowed down for the reasons stated above and also because of a severe slump in the real estate market. The complainant is not entitled to seek a refund as the money has already been used for the purposes of carrying out the construction and other ancillary activities related to the project, which construction is existing and while the construction is in progress.

24. The respondent submitted that it is humbly and respectfully submitted that in group housing projects a certain amount of

delay can occur due to various reasons including departmental compliances/approval from time to time.

25. The respondent submitted that as stated above, there is no delay as such and in case of any delay, the complainant is entitled to a reasonable compensation which is already provided in the apartment buyer's agreement and the final adjustment could be carried out at the time of delivery of possession and execution of conveyance deed and final payments. It is settled law and has been held by Hon'ble Supreme Court of India, that:

“14. Incidentally the law is well settled on this score on which no further dilation is required in this judgment to the effect that when the contract itself provides for extension of time, the same cannot be termed to be the essence of the contract and default however, in such a case does not make the contract voidable either. It becomes voidable provided the matter in issue can be brought within the ambit of the first para of Section 55 and it is only in that event that the Government would be entitled to claim damages and not otherwise.”

26. The respondent submitted that the apartment buyer's agreement was executed between the parties prior to the RERA and HRERA. It is stated that the apartment buyer's agreement was executed between the parties on 13.12.2012, which is prior to coming into effect of the said act and the rules. The determination of relationship between the complainant

and respondent company is governed by the terms and conditions of the said apartment buyer's agreement including the payment of delay compensation and the same contention is supported on perusal of explanation 1 to the draft agreement for sale as provided under the said Rules, the contents whereof is reproduced as under:

“Explanation:- (a) The promoter shall disclose the existing Agreement for Sale entered between Promoter and the Allottee in respect of ongoing project along with the application for registration of such ongoing project. However, such disclosure shall not affect the validity of such existing agreement (s) for sale between Promoter and Allottee in respect of apartment, building or plot, as the case may be, executed prior to the stipulated date of due registration under Section 3(1) of the Act.....”

27. The respondent submitted that in view of above, it is clear that Ld. Authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties *inter-se* in accordance with the apartment buyer's agreement signed between the complainant and respondent company. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said act or said rules, has been executed between the complainant and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the BBA

dated 19.12.2012, executed much prior to coming into force of said act or said rules and therefore, in case of any delay, the complainant is entitled to a reasonable compensation which is already provided in the apartment buyer's agreement and the final adjustment could be carried out at the time of delivery of possession and execution of conveyance deed and final payments.

Determination of issues:

28. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

I. With respect to the **first and third issues** raised by the complainant, the authority came across clause 1.2 of the apartment buyer's agreement which is reproduced hereunder:

“in addition to the basic sale price of the said apartment, the allottee has agreed to pay the following costs, charges, fees and deposits as per the payment schedule, forming part of the consideration for the allotment of the said apartment”

There after Clause (b):

“External development charges(EDC) and Internal development charges (IDC) Rs.5,65,018.00”/-

There after Clause (c):

“Car parking charges in basement @Rs.3,00,000”/-“

Thus the respondent is well within his rights to claim the respective charges. Hence the issues are decided in negative.

II. With respect to the **second issue** raised by the complainant, the authority came across clause 13 of the buyer’s agreement which is reproduced hereunder:

“possession of the said apartment is proposed to be delivered by the company to the allottee within 42 months from the date of this agreement.....the company shall be entitled to 6 months additional period in the event there is delay in handling over possession”

29. The due date comes out to be 13.12.2016 and the possession has been delayed by 2 years 5 months 17 days. Therefore, under section 18(1) proviso respondents are liable to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of

possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act ibid read with rule 15 of the rules ibid, to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.65% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 13.12.2016.

30. Accordingly, the due date of possession was 13.12.2016 and the possession has been delayed by 2 year 4 month and 17 days till date. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the super area of the unit for the period of delay beyond 42 + 6 months as per clause 13 of apartment buyer's agreement is held to be very unjust. The terms of the agreement have been drafted

mischievously by the respondent and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 13.12.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

III. With respect to the **fourth issue** raised by the complainant, as the project is registered vide no.08 of 21.02.2019. Therefore, this issue decides in negative.

Findings of the authority:

31. **Jurisdiction of the authority-** The project ‘CHD 106 Golf Avenue’ is situated in Sector-106, Gurugram. As the project in

question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

32. The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
33. As per clause 13 of the apartment buyer's agreement dated 13.12.2012 for unit no.T06-09/02, tower-T06, in project "CHD 106 Golf Avenue", Sector-106, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of execution of apartment buyer's

agreement + 6 months grace period which comes out to be 13.12.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.81,68,698/- to the respondent against a total sale consideration of Rs.86,29,899/-.

34. Vide proceedings dated 24.04.2019 Local Commissioner was appointed to ascertain the status of project and the same is placed on record. The relevant portion of the report is reproduced as under:-

The complete project is physically inspected, and it is observed that only 5-10 labour force were imposed on site just to misguide the authority as the condition of site states that no work has been carried out since 1 year. The work progress is based upon the actual construction on site:-

- The overall progress of the project is approximately 40-45 per cent only.
- The work progress in tower 6 is approximately 55-60 per cent only.

- The work progress of complainant unit is approximately 60-65 per cent only.
- At some places on the site, it was observed that the quality of bricks used was very poor, cracks were observed in the plaster and walls.

Decision and directions of the authority:

35. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.65% p.a. from due date of possession i.e. 13.12.2016 till the handing over of the possession to the allottee.
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iii. The respondent is directed not to charge anything from the complainant which is not part of the apartment buyer's agreement.

iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

v. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

41. The order is pronounced.

42. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated:30.05.2019

Judgement uploaded on 11.06.2019