

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

Complaint no. : 578 of 2019
Date of first hearing: 02.08.2018
Date of decision : 30.05.2019

Shri Krishan Wats
R/o Flat no. C-11,
Summit building, DLF phase-V,
Gurugram, Haryana-122001.

...Complainant

Versus

M/s CHD Developers Ltd.
Office at: SF-16-17, first floor, Madame
Bhikaji Cama Bhawan, 11, Bhikaji Cama
Place, New Delhi-110066.

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Krishan Wats
Ms. Mani Mathur

Complainant in person
Proxy counsel for Shri Anup
Gupta, advocate for the
respondent

ORDER

1. A complaint dated 08.02.2019 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 Shri Krishan Wats, against the respondent M/s CHD Developers Ltd., on

account of violation of clause 13 of the apartment buyer's agreement executed on 14.03.2013 for unit no. T-01/04-03 in the project "106 Golf Avenue" for not giving possession by 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 was executed on 14.03.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

| | | |
|----|----------------------------------|-------------------------------------------|
| 1. | Name and location of the project | "106 Golf Avenue" in Sector 106, Gurugram |
| 2. | Project area | 12.344 acres |
| 3. | Nature of project | Residential group housing colony |
| 4. | Unit/apartment no. | T-01/04-03, tower 01 |
| 5. | Unit admeasuring | 1633 sq. ft. |
| 6. | Registered/not registered | Registered vide no. 08 of 2019 |
| 7. | RERA registration valid up to | 30.06.2021 |
| 8. | DTCP license | 69 of 2012 |

| | | |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 9. | Allotment letter | 25.01.2013 (annexure R4, page 35 of reply) |
| 10. | Date of apartment buyer's agreement | 14.03.2013 |
| 11. | Total consideration as per clause 2 of the apartment buyer's agreement | Rs. 87,61,935.76/- (page 35 of complaint) |
| 12. | Total amount paid by the complainant as admitted by the respondent | Rs. 80,35,965 (excluding taxes) |
| 13. | Payment plan as mentioned in the complaint | Construction linked payment plan |
| 14. | Due date of delivery of possession as per clause 13 of agreement dated 14.03.2013- 42 months from date of execution of this agreement + 6 months grace period | 14.03.2017 |
| 15. | Delay in delivering possession till date of decision | 2 years 2 months 17 days |
| 16. | Penalty clause as per clause 13 apartment buyer's agreement | Rs. 10/- per sq. ft. per month of the super area of the apartment for the period of further delay |

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 14.03.2013 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainant by 14.03.2017. But

the respondent has failed to fulfil its obligations till date, which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance. The respondent appeared on 30.05.2019. The case came up for hearing on 30.05.2019. The reply filed by the respondent on 27.02.2019 has been perused by the authority.

FACTS OF THE COMPLAINT

5. The complainant submitted that the respondent has received 95% of the basic sale price of the unit, car parking charges, PLC charges, EDC/IDC as per the agreement and service tax plus as per the government rules.
6. The complainant submitted that whereas he kept commitments strictly according to the apartment buyer's agreement, the respondent has failed to deliver the apartment booked with him till now though the delivery date committed by him vide clause 13 of apartment buyer's agreement (42+6months) was 13.09.2016. The builder has diverted funds received for the project to some other projects resulting in paucity of funds to carry on construction activity.
7. The complainant submitted that the construction work has been stopped for the last two years without any notice to the buyer. This diversion of funds by builder amounts to criminal offence as held by hon'ble supreme court in its judgment.

Construction status as on dated 26-01-2019 which has been brought on record.

8. The complainant submitted that the builder has not registered its project with HRERA so far though it is mandatory under the Act. This is illegal aspect of the builder.
9. The said apartment buyer's agreement dated 14.03.2013 is totally one-sided imposing completely biased one sided terms and conditions, tilting the power in favour of respondent.
10. The complainant submitted that the structure so far completed is of substandard quality. The construction carried so far is with poor quality of material.
11. The respondent has also charged EDC and IDC charges in full from the complainant, but has not been deposited by the respondent with the government. Thus, the intention of the respondent has been dishonest from the inception of the agreement.
12. The complainant submitted that respondent did not contact buyers for the stoppage of construction. A group of buyers since 2017 compelled the respondent to hold meetings at site. At these meetings respondent made false promises every time amounting to cheating.
13. The complainant submitted that in the last meeting held on 04.08.2018, the respondent 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. Minutes of the meeting were signed by Mr. Gaurav Mittal, managing director of the respondent company. The respondent promised to hold next meeting on 18.09.2018, but has failed to hold it so far.

14. The complainant submitted that despite repeated requests Mr. Gaurav Mittal is avoiding meeting the group of buyers till now showing his bad intention of cheating the buyers. At present only about 100 workers are found at the site. This does not compare well with the promised strength of 400 workers. Moreover, with this strength the project cannot be completed with the promised date of April, 2019.

ISSUES RAISED BY THE COMPLAINANT

15. The complainant has raised the following issues:

- 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?
- ii. Whether the car parking charges have been wrongfully demanded and be refunded back to complainant with 18% interest?
- iii. Whether the respondent CHD Developers Ltd. is avoiding registration under HRERA for so long to escape from regulatory provisions of the Act?

RELIEF SOUGHT BY THE COMPLAINANT

16. The complainant is seeking the following reliefs:

- i. Direct the respondent to ensure an early date of possession with quality of work as per specifications in apartment buyer's agreement.
- ii. Project quality and technical audit to be conducted at respondent risk and cost as tower construction was completed structurally way back in early 2014 and since the project was abandoned and long-time lapsed.
- iii. Penalty of 10% of estimated cost of the project shall be imposed on the respondent no. 1 and 2 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 mandate the promoters of ongoing project to register within the three 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 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 respondent (M/s. CHD Developers Ltd.) is renowned real estate company engaged in the business of construction and Real Estate.
17. The respondent submitted that the present reply on 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.
18. The respondent submitted that the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this authority.
19. The respondent submitted that further without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
20. The respondent submitted that the complainant is not entitled for refund of money along with interest. In 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 he will not be able to make profit on his 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.

21. The respondent submitted that the parties had executed an apartment buyer's agreement on 14.03.2013. In terms of the apartment buyer's agreement, the complainant had agreed to purchase the apartment bearing no. T01-04/03 in tower no. 01 of the residential group housing colony named "106 Golf Avenue" in Sector-106, Gurugram, Haryana (the "apartment") for a total consideration amount of Rs. 84,83,745/- excluding other applicable taxes and charges.
22. 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 execution of the apartment buyer's agreement and that the respondent would be entitled to an additional period of 06 months. The respondent 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 instalments

and the formalities for completion, as provided in the apartment buyer's agreement.

23. The respondent submitted 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 some interior and finishing work is required to be completed and the same is in progress or all most completed.
24. The respondent submitted that the 42 months period provided for delivery of possession expired on 14.09.2016. The additional period of 06 months expired on 14.03.2017. 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 respondent that "vide order dated 07.04.2015 and 10.04.2015 in original application no. 21 of 2014 titled as ***"Vardhaman Kaushik 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 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.

25. 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 refund as the money has already been used for the purposes of carrying out the construction and other ancillary activities related to the project.
26. The respondent submitted that the construction of the said project is in full swing and in progress despite severe slump in the real estate market and decline in the prices of properties. The respondent 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.

27. 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."

28. The respondent submitted that the apartment buyer's agreement was executed between the parties prior to the RERA("Act") and HRERA ("Rules"). It is stated that the agreement was executed between the parties on 14.03.2013, 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 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”

29. The respondent submitted that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties *inter-se* in accordance with the 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 agreement dated 14.03.2013, 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.

30. The respondent submitted that over the years, respondent has successfully developed various real estate projects around the country and due to its uncompromising work ethics, honesty, quality of construction and timely delivery of the projects to the utmost satisfaction of its customers, it has established an unimpeachable reputation in the real estate business.

DETERMINATION OF ISSUES

31. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

- i. In respect of **first issue** raised by the complainant, the respondent submitted that the construction of the tower in question is almost complete and only the interior and finishing work is required to be completed and the same is in progress. Report of the local commissioner dated 29.05.2019 was received and the same has been 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 the 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% only. The work progress in tower 1 is

approximately 45-50% only. The work progress of complainant unit is approximately 50-55% only. At some places on the site, it was observed that the quality of bricks used was very poor and cracks were observed in the plaster and walls.”

Keeping in view the interest of allottees and the completion of the project, the authority is of the view that rather than allowing the refund, the complainant is entitled to delayed possession charges.

The authority came across that as per clause 13 of apartment buyer’s agreement, the possession of the said apartment was to be handed over within 42 months plus grace period of 6 months from the date of execution of the said agreement. The agreement was executed on 14.03.2013. Therefore, the due date of possession shall be computed from 14.3.2013. Grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond the control of respondent.

Accordingly, the due date of possession was 14.03.2017 and the possession has been delayed by two years two months and seventeen days till the date of decision.

As the promoter has failed to fulfil its obligations under section 11 of the Act *ibid*, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f. 14.03.2017 till date of offer of possession 30.05.2019 as per the provisions of section

18 (1) of the Real Estate (Regulation and Development) Act, 2016.

- ii. In respect of **second issue** raised by the complainant, as per clause 1.2(c) of the apartment buyer's agreement dated 14.03.2013, the car parking charges are priced at Rs. 3,00,000/-. The relevant clause is reproduced as under:

“Clause 1.2(c): car parking charges (per car) in basement at Rs. 3,00,000/-”

Thus, the respondent is well within its right to charge the said amount and the issue is decided in negative.

- iii. In respect of **third issue** raised by the complainant, the project is registered with the authority vide registration no. 08 of 2019 and the same is valid till 30.06.2021. Thus this issue is decided in negative.

FINDINGS OF THE AUTHORITY:

32. **Jurisdiction of the authority-** 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.

33. 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 complainant at a later stage.

34. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter under section 11 of the Act *ibid*. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions of the Act and to fulfil its obligations.
35. Report of the local commissioner dated 29.05.2019 was received and the same has been 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 the 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% only. The work progress in tower 1 is approximately 45-50% only. The work progress of complainant unit is approximately 50-55% only. At some places on the site, it was observed that the quality of bricks used was very poor and cracks were observed in the plaster and walls.”

36. As per clause 13 of the apartment buyer’s agreement dated 14.03.2013 for unit no. T01-04/03, in project “106 Golf

Avenue” Sector-106, Gurugram, possession was to be handed over to the complainant within a period of 42 months plus 6 days grace period from the date of execution of the agreement. Thus, the due date comes out to be 14.03.2017. However, the respondent has not delivered the unit in time. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f. 14.03.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY:

37. 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 parties in the interest of justice and fair play:

- i. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
- ii. The promoter shall not charge anything from the complainant which is not a part of the apartment buyer’s agreement.
- iii. 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 being granted to the complainant in case of delayed possession

- iv. The respondent is directed to pay interest at the prescribed rate of 10.65% per annum on the amount deposited by the complainant with the promoter from the due date of possession i.e. 14.03.2017 up to the date of offer of 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.

38. The complaint is disposed of accordingly.

39. The order is pronounced.

40. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Dated: 30.05.2019

Judgement uploaded on 12.06.2019