

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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Appeal No.167 of 2019  
Date of Decision: 26.08.2019

1. Mr. Abhineet Agarwal
  2. Mrs. Monika Agarwal
- 26/10, GF, Ashok Nagar, New Delhi-110018.

Appellants

Versus

1. CHD Developers Limited
  2. Mr. R.K. Mittal, Director, CHD Developers Limited
  3. Mr. Gaurav Mittal, Director, CHD Developers Limited
  4. Ms. Shailly Goel, Director, CHD Developers Limited
  5. Mr. Pran Nath, Director, CHD Developers Limited
- Urban Plus Infrabuild Pvt. Ltd., 381, SCO Building, FF & SF,  
Sector-29, Gurgaon, Haryana.
- 2<sup>nd</sup> Address:  
SF-16-17, 1<sup>st</sup> Floor, Madame Bhikaji Cama Bhawan, 1, Bhikaji  
Cama Place, New Delhi-110066.

Respondents

**CORAM:**

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

**Present:** Shri Sanjeev Pabbi, Advocate, learned counsel for the appellants.  
Shri Shubhnit Hans, Advocate learned counsel for the respondents.

**ORDER:**

The present appeal has been preferred by the appellants-complainants against the order dated November 27<sup>th</sup>, 2018 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to 'the Authority') seeking refund of the entire amount of Rs.72,42,935/- (Rupees seventy two lacs, forty two thousand, nine hundred and thirty five only) deposited by them with

the respondents alongwith interest, compensation and cost of litigation.

2. The appellants-complainants filed complaint with the learned Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to 'the Act') read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to 'the Rules') on account of violation of Clause 12 of the Builder Buyer Agreement executed on October 21<sup>st</sup>, 2014 in respect of a flat No.CVN-T07-00/05, Sector-71, Gurugram, for not handing over possession on the due date i.e. October 21<sup>st</sup>, 2018. The complainants had sought refund of the entire amount of Rs.72,42,935/- deposited by them with the respondents alongwith penal interest, pre-EMI interest, reimbursement of the rent paid by them, Rs.20,00,000/- (Rupees twenty lacs only) as compensation for physical harassment and mental agony, and Rs.2,00,000/- (Rupees two lacs) as costs of litigation.

3. The learned Authority vide its order dated November 27<sup>th</sup>, 2018 has given the following decision and directions by exercising the powers vested under section 37 of the Real Estate (Regulation and Development) Act, 2016: -

- (i) The respondents are directed to handover possession of the said unit latest by 28.07.2021 as committed by the builder in the application for the registration of the project.
- (ii) The respondents are directed to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 21.10.2018 till handing over the possession of the unit.
- (iii) The respondents are directed to pay interest accrued from the due date of possession i.e. 21.10.2018 till

the date of decision, on account of delay in handing over of possession to the complainants within 90 days from the date of decision i.e. 27.11.2018 and subsequent monthly interest to be paid before 10<sup>th</sup> of subsequent month till handing over the possession.

- (iv) The complainants shall be liable to pay delayed payment charges @ 10.75% per annum for the default in making timely payments to respondents.

The learned Authority had further decided that if the builder in all probabilities fails to deliver possession by the committed date i.e. 28.07.2021 as committed in the application of registration, in that case the complainants shall be entitled to seek refund.

4. Aggrieved with the aforesaid order dated November 27<sup>th</sup>, 2018 the present appeal has been preferred by the appellants/complainants allottees.

5. The appellants/complainants allottees had sought refund of the entire amount alongwith interest, compensation and cost of litigation in the complaint before the learned Authority. The same relief has been sought by them in the present appeal before this Tribunal. So, the complaint filed by the appellants was for grant of relief of refund/return of the entire amount deposited by them with the Respondents-Promoters alongwith interest, compensation and costs of litigation on account of delay in the delivery of possession of the flat/apartment.

6. We have heard Shri Sanjeev Pabbi, Advocate, learned counsel for the appellants, Shri Shubnit Hans, Advocate, learned counsel for the respondents and have gone carefully through the case file.

7. The question as to whether the Ld. Authority was competent to entertain and deal with the complaint wherein the

complainants/allottees claim the relief of refund alongwith interest and compensation is not res-integra, as we have already answered this question in a bunch of 19 appeals the lead appeal being appeal No.6/2018 titled as Sameer Mahawar Vs. MG Housing Pvt. Ltd. Vide our detailed order dated 02.05.2019. In that order after taking into consideration the provisions of Sections 11(4), 12, 14, 18, 19, 31, 34(f), 37, 38 and 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) and rule 28 & 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the rules), we have laid down as under:-

*“48. Thus, as a result of our aforesaid discussions, we conclude and sum up our considered view in following manner: -*

- (i) That violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid the conflicting findings.*
- (ii) The complaints for the grant of relief of compensation can only be adjudicated by the adjudicating officer as per the provisions of section 71 of the Act and rule 29 of the Rules.*
- (iii) Similarly, if compensation is provided as a part of the multiple reliefs alongwith refund/return of investment with interest flowing from the same violation/violations and causes of action, the complaints have to be placed before the adjudicating officer exercising the powers under Section 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.”*

8. In view of our aforesaid findings the Ld. Authority had no jurisdiction to entertain the complaint filed by the appellants-allottees wherein they have claimed the relief of refund alongwith interest. The Adjudicating Officer, who is the only forum to entertain the complaint, will decide this question afresh, in accordance with law.

9. Thus, keeping in view of our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated November 27<sup>th</sup>, 2018 is hereby set aside. The complaint filed by the appellants/allottees stands transferred to the Adjudicating Officer, Gurugram for adjudication in accordance with law. The Adjudicating Officer will allow the appellants/allottees to amend their complaint in order to bring it within the parameters of Form "CAO" as provided in rule 29 of the Rules.

10. This order passed by this Tribunal and observation of the learned Authority in the impugned order will not prejudice the mind of the learned Adjudicating Officer qua the rights of the parties on merits of the case.

11. The parties are directed to appear before the Learned Adjudicating Officer, Gurugram on 13.09.2019 for further proceedings. Copy of this order be communicated to the learned Real Estate Regulatory Authority, Gurugram and the learned Adjudicating Officer, Gurugram for compliance.

12. File be consigned to records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh  
26.08.2019

Inderjeet Mehta  
Member (Judicial)  
26.08.2019

Anil Kumar Gupta  
Member (Technical)  
26.08.2019