



HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

gfj;k.kk Hkw&laink fofu;ked
izkf/kdj.k] xq#xzke

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

Complaint No. : 19/2018
Date of Decision : 15.01.2020

Ms Chandramauli Gupta
R/o H No.6-B, Sector-14, Gurugram

Complainant

V/s

M/s CHD Developers Ltd.
R/o SF-16-17, First Floor, Bhikaji Came Bhawan,
11, Bhikaji Came Place, New Delhi.

Respondent

Argued by:

For Complainant

Shri C S Gupta, AR

For Respondent

Mr. Ravi Aggarwal, Adv

ORDER

This is a complaint under section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by Ms Chandramauli Gupta seeking refund of Rs.63,55,674/- deposited

Shri C S Gupta
15.1.2020

XIV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 12 of ABA
Payment details		
XV	Total sale consideration	Rs. 1,77,84,960/-
XVI	Total amount paid by the complainant till date	Rs. 63,55,674/-

2. It is the case of the complainant that she booked a residential flat measuring 2045 sq ft in the project of respondent known as CHD VANN located in Sector -71 on 18.10.2014 for a total sale consideration of Rs.1,77,84,960/- An Apartment Buyer Agreement was executed between the parties on 18.10.2014 and as per the same, the possession of the allotted unit was to be delivered to the complainant within a period of 42 months. It is the case of the complainant that she made various payments totalling Rs.63,55,674/- with the respondent. Though the time for possession of the allotted was extended for a period of six months but that period has also expired on 18.10.2018. It is further the case of complainant that the respondent did not start construction work at the spot and misappropriated the amount received from her. So, on these broad averments, she filed a complaint seeking refund of the amount deposited with the respondent besides interest and other charges.

3. But the case of the respondent as set up in the written reply is that though the complainant booked a unit in its project mentioned above but it was denied that the construction of that project has not yet commenced. Rather, the construction is in full swing and is in progress and possession of the allotted unit would be delivered to her within the stipulated period

Sh. C. C. S.
15/1/2020

subject to adherence of terms of agreement by her and force majeure etc. Though, there is some delay in the completion of the project but that is due to various orders passed by Haryana State Pollution Control Board, National Green Tribunal, New Delhi and slow down in the real estate market etc. Moreover, the complainant is an investor and invested money in the project with a hope to earn more. Lastly, it was pleaded that the respondent developed various projects to the utmost satisfaction of its customers and it has established an unimpeachable reputation in the real estate business.

4. After hearing both the parties and perusal of the case file, the learned Authority vide its order dated 19.09.2018 directed the respondent to refund the amount deposited by the complainant with it besides interest at the prescribed rate of interest within a period of 90 days. Feeling aggrieved with the same, the respondent filed an appeal before the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh and who vide order dated 03.07.2019 accepted the same and directed this forum to adjudicate the complaint filed by the complainant in accordance with law and permitting the complainant to amend the complaint in order to bring it within the parameters of form CAO as provided in Rule 29 of the Rules, 2017.

5. In pursuance of the directions given by the Hon'ble Appellate Tribunal, the complainant filed an amended complaint as directed and a copy of the same was sent to the respondent but no reply to the same was filed and ultimately the defence of the respondent was ordered to be stuck of on 23.12.2019.

6. I have heard the learned counsel for the parties and have also perused the case file.

7. Some of the admitted facts of the case are that the complainant booked a flat bearing No. CVN-T-03/02/01 in the project of the respondent known as

Shri C C P
15/1/2020

CHD VANN situated in Sector 71, Gurugram on 29.04.2014 vide an application Annexure R-1. An Apartment Buyer Agreement Annexure R-II dated 18.10.2014 was executed between the parties. It is evident that total costs of the allotted unit was Rs.1,77,84,960/- under the construction linked payment plan. It is also a fact that the complainant paid a total sum of Rs.63,55,674/- and possession of the allotted unit was to be delivered to her as per Buyer's Apartment Agreement within the stipulated period of 42 months with a grace period of six months i.e. upto 18.10.2018. However, the respondent failed to offer/deliver the possession of the allotted unit to the complainant. So, now the question for consideration arises as to whether the respondent has violated the terms and conditions of ABA Annexure R-II or not and secondly, if the same is proved in affirmative whether the claimant is entitled for refund of the amount deposited with the respondent with interest and other charges.

8. A perusal of Clause 12 Annexure R-1 i.e. application form alongwith ABA Annexure R-II shows that the complainant was allotted a residential unit in Tower No.03 ~~the~~ ^{the} under construction linked payment plan. A total sum of Rs.63,55,674/- was deposited by the complainant with the respondent on different dates and that comes to almost 35% of the total cost of the allotted unit. The possession of that property was to be delivered to the complainant within a period of 42 months from the date of execution of ABA i.e. 18.04.2018 with a grace period of six months i.e. upto 18.10.2018. However, it has come on record that the respondent failed to complete the construction and handover the possession of the allotted unit to the complainant in its project CHD Vann situated in Sector 71, Gurugram within that period. Rather, it has come on record that despite receiving 35% of the costs of the allotted unit from the complainant, the respondent completed 14% of the construction in its project in which the complainant was allotted

Shri C C 15/1/2020

a residential unit. It is pleaded by the respondent that due to factors beyond its control, it could not complete the construction. Moreover, the project is registered with the Authority, Gurugram and the possession of the allotted unit would be delivered within the next year. It has also moved the Hon'ble High Court for external development works of the project. The respondent has already deposited external development charges with the State and despite that it failed to carry out its obligations. So, that led to filing of Civil Writ Petitions bearing Nos.29546,29548 and 29548 against the State of Haryana and Ors and wherein the Hon'ble High Court directed the State to carry out the developmental works forthwith and till the time, the works are not completed, they were restrained from demanding any further amount from the petitioners i.e. the respondent and others. Lastly, due to slow down and various orders passed by the National Green Tribunal etc, the work of the project could not be completed and the same would be completed soon and the complainant would be offered possession of the allotted unit. If the complainant is allowed to withdraw from the project of the respondent and is ordered to pay back the money deposited by her, then, it would be detrimental to the real estate sector and which is not the object of the Act, 2016.

9. Though before amendment of pleadings, the respondent filed reply controverting the pleas taken by the complainant but after amendment, it failed to file any fresh reply. Secondly, it has also failed to place on record any document showing the actual status of the project in which the complainant was allotted a unit and the tentative date of delivery of possession. There is clause 11 of terms and conditions of Annexure R-1 with regard to allotment of residential unit to the complainant by the respondent. A reference in this regard may be made to it which is reproduced as under:

Shri. 15.1.2020

“The Developer shall offer possession of the Unit any time, within a period of 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 11. Further, there shall be grace period of six months allowed to the Developer over and above the period of 42 months as above in offering the possession of the unit.”

10. A perusal of this document shows that as per ABA, the possession of the allotted unit was to be offered to the complainant by the respondent within a period of 42 months with a grace period of six months i.e. upto 18.10.2018. However, there is nothing on record to show that either during this period or after that the respondent offered possession of the allotted unit to the complainant. Moreover, the complainant was allotted the residential unit under construction linked payment plan. So, if there is any delay on obtaining statutory sanctions by the respondent either to carry out construction activities or proceed with the same, then it should not asked the complainant to make payment of the amount due. It is not proved that during the period of obtaining statutory sanctions including various orders passed by the National Green Tribunal and economic slow down etc, the complainant was asked not to make payments towards the allotted unit. Then, the respondent has not been able to make out a case that it was unable to complete the project due to hindrances in between the period 2014-2018 respectively. It was under contractual obligations to deliver the unit to the complainant within the stipulated period. So, the reasons given by the respondent qua non-completion of the project as such, non-completion of external developments by the State and various orders passed by National Green Tribunal, New Delhi and economic slow down are of no help to absolve it from its contractual obligations and it cannot take the shelter under clause force majeure and one sided contractual obligations. In case of

Shruti
15/11/2020

Neelkamal Realtors Suburban Pvt Ltd. Vs Union of India & Ors.

2018(1)RCR (Civil) 298, the same issue arose as in the present case wherein a Division Bench of the Hon'ble Bombay High Court observed as under:

“...Agreements entered into with individual purchasers are invariably one sided standard-format agreements prepared by the builders/developers and which are 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.”

Then recently, the Hon'ble Haryana Real Estate Appellate Tribunal in case of Magic Eye Developers Pvt Ltd. Vs Ishwar Singh Dahiya in Appeal No.174 of 2019 decided on 17.12.2019 and by relying upon the ratio of law laid down in case of **Neelkamal Realtors Suburban Pvt Ltd. Vs Union of India & Ors.** it was held that the builder cannot be absolved of its contractual obligations and cannot take shelter under the same.

11. The due date to deliver the possession of the allotted unit to the complainant was 18.10.2018. A period of more than one year has lapsed and there is nothing on record to show that the project is likely to be completed soon and what is the tentative date of its completion and to offer possession of the allotted unit to the complainant. She cannot be asked to wait indefinitely for the possession of the allotted unit. Thus, where the respondent has failed to honour its commitment to complete the project and deliver possession of the allotted unit within the stipulated period, the complainant is legally entitled to seek refund of the amount already deposited besides interest and compensation. A reference in this regard may be made to the ratio of law in cases of **Pioneer Urban Land &**

Shri C
15/1/2020

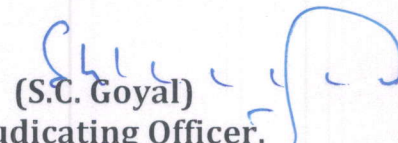
15. The complainant is also entitled to a sum of Rs.20,000/- as compensation inclusive of litigation charges to be paid by the respondent.

16. The payments in terms of this order shall be made to the complainant by the respondent within a period of 90 days from the date of this order and failing which legal consequences would follow.

17. Hence, in view of above, the complaint stands disposed of.

18. File be consigned to the Registry.

15 .01.2020


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 15-1-2020