

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

Complaint no. : 2842 of 2019
First date of hearing: 13.11.2019
Date of decision : 09.01.2020

Shri Nitin Duggal
R/o H-413, Sector-7, Panchkula - 134109

Complainant

Versus

M/s CHD Developers Ltd.
Regd. office: 702-707, Emmar Digital Greens,
Tower-A, Sector-61, Golf Course Extension
Road, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Rajan Kumar
Shri Ravi Agrawal

Advocate for the Complainant
Advocate for the respondent

ORDER

1. The present complaint dated 07.08.2019 has been filed by the complainant-allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"106 Golf Avenue", Sector 106, Gurugram, Haryana
2.	Project area	12.344 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	69 of 2012 dated 03.07.2012 valid till 02.07.2016
5.	Name of licensee	Empire Realtech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 8 of 2019 dated 21-02-2019
7.	HRERA registration valid up to	30.06.2021
8.	Unit no.	T-06-09/04 [Page 29 of complaint]
9.	Unit measuring (super area)	1940 sq. ft.
10.	Date of execution of allotment letter	05.12.2012 [Page 27 of complaint]
11.	Total consideration as per applicant ledger dated 13.05.2019 attached at pages 74 of the complaint.	Rs.63,53,675/-
12.	Total amount paid by the applicant ledger dated 13.05.2019 attached at pages 74 of the complaint.	Rs.58,81,744 /-
13.	Due date of delivery of possession as per clause 13 of the said apartment buyer agreement i.e. 42 months from	05.12.2016



	the date of execution of the agreement plus grace period of 6 months. [Page 40-41 of complaint]	
14.	Offer of possession to the complainants	Not offered till date
15.	Delay in handing over possession till <i>date of decision</i> i.e. 09.01.2020	3 years 1 month and 04 days
16.	Status of the project	OC not received till date
17.	Relief sought	<ul style="list-style-type: none">i. To award Interest @18% compounding from due date of possession till actual possession.ii. To cancel the unit and refund the amount if the given date of possession is not adhered to.iii. To pay litigating cost.

3. As per clause 13 of the Apartment buyer agreement, the possession was to be handed over within a period of 42 months from the date of execution of agreement (05.12.2012) plus grace period of 6 months which comes out to be 05.12.2016. Clause 13 of the apartment buyer agreement is reproduced below:

"13. Time of handing over of possession: ...

- (I) *Barring unforeseen circumstances and force majeure events, court indulgence as stipulated hereunder, the possession of the said apartment is proposed to be*



delivered by the company to the allottee within 42 months(three and half years) from the date of execution of this agreement, subject to payment by the allottee(s) towards the basic sale price and other charges, as demanded in terms of this agreement. The time frame for delivery of possession provided herein above is tentative and shall be subject to force majeure, court indulgence and timely prompt payment of all installments and the formalities for completion required. The company shall be entitled to avail time for completion of construction of the project if the delay occurs due to departmental delay or any other circumstance beyond the power and control of the company. The company shall be entitled to six(6) months additional period in the event there is delay in handing over possession. However, in case of delay beyond the period of six(6) months and such delay is attributable to the company, the company shall be liable to pay compensation @Rs10.00(Rupees ten only) per sq. ft. per month of the super area of the apartment for the period of further delay. The adjustment of compensation, if any, shall be done at the time of conveyance of the flat and not earlier...."

4. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant seeks delayed possession charges with interest, cancellation of unit and refund. Hence, this complaint for the relief as stated above.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.



6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
7. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.
8. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
9. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13 of the apartment buyer agreement executed between the parties on



05.12.2012, possession of the booked unit was to be delivered within a period of 42 months plus 6 months' grace period from the date of execution of said agreement. As such the due date of delivery of possession on calculation comes out to be 05.12.2016. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 05.12.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges at the prevalent prescribed rate of interest i.e.10.20% p.a. w.e.f. 05.12.2016 (due date of delivery of possession) till the actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has paid Rs. 58,81,744/- as per applicant ledger dated 13.05.2019 placed at page 74 against total sale consideration of Rs. 63,53,675/-.

10. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. As such the complainant is entitled for delayed possession charges @10.20 % p.a. w.e.f. 05.12.2016 till offer of possession as per provisions of section 18(10) of the Real estate (Regulation and Development) act,2016.



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.

- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainants which is not part of the BBA.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
11. Complaint stands disposed of.
12. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date: 09.01.2020