

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

Complaint No. : 397 of 2018
Date of First
Hearing : 02.08.2018
Date of Decision : 13.09.2018

Smt. Roshini Alimchandani,
R/o Flat no.6, New Alpha Building, Seven
Bungalows, Versova, Andheri-West,
Mumbai-400061;
A-414, LGF, Defence Colony, New Delhi-
110024

...Complainants

Versus

M/s CHD Developers Ltd. (R1)
M/s Empire Realtech Pvt. Ltd. (R2)
Office at: SF-16-17, First Floor, Madam
Bhikaji Cama Bhawan, Bhikaji Cama Place,
new Delhi-110066

...Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Sidharth Agarwal
Shri Anup Gupta

Advocate for the complainant
Advocate for the respondents



ORDER

1. A complaint dated 07.06.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Smt. Roshini Alimchandani, against the promoters M/s CHD Developers Ltd. and M/s Empire Realtech Pvt. Ltd., on account of violation of clause 13 of the apartment buyer's agreement executed on 1.04.2013 for unit no. T-07-00/06 in the project "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. The particulars of the complaint are as under: -

1.	Name and location of the project	"106 Golf Avenue" in sector 106. Daultabad village, Gurugram
2.	Unit no.	T-07-00/06
3.	Project area	12.344 acres
4.	Registered/ not registered	Not registered
5.	DTCP license	69 of 2012
6.	Date of booking	04.03.2013
7.	Date of apartment buyer agreement	01.04.2013
8.	Total consideration	Rs. 84,84,398/- (Total cost with tax, as per applicant ledger dated 15.05.2018)



9.	Total amount paid by the complainant	Rs. 77,65,607/-
10.	Payment plan	No pre-emi plan (As per applicant Ledger dated 15.05.2018)
11.	Date of delivery of possession	Clause 13 - 42 months from date of agreement + 6 months grace period i.e. 01.04.2017
12.	Delay of number of months/ years upto 13.09.2018	1 year 5 months
13.	Penalty clause as per apartment buyer agreement dated 01.04.2013	Clause13- Rs. 10/- per sq. ft. per month

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer agreement is available on record for Unit No. T-07-00/06 according to which the possession of the aforesaid unit was to be delivered by 01.04.2017. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 02.08.2018 and 13.09.2018. The case came up for hearing on 02.08.2018. The reply has been filed on behalf of the respondents on 04.09.2018.



Facts of the complaint

5. On 04.03.2013, the complainants booked a unit in the project named "106 Golf Avenue" in Sector 106, Daultabad village, Gurugram by paying an advance amount of Rs 10,00,000 /- to the respondents. Accordingly, the complainant was allotted a unit bearing no. T-07-00/06, Tower no.7, having saleable area of 1183 sq. ft.
6. On 01.04.2013, an apartment buyer agreement was entered into between the parties wherein as per clause 13, the construction should have been completed within 42 months from date of agreement + 6 months grace period i.e. 01.04.2017. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondents. The complainant made payment of all instalments demanded by the respondents amounting to a total of Rs 77,65,607/-.
7. The complainant submitted that the representatives of the respondent no.1 at the time of booking represented to the complainant that respondent no.1 is developing the above project and is the absolute owner of land where the proposed project is supposed to be developed. However, at the time of execution of the buyer's agreement, the complainant and other home buyers gained knowledge that the respondent no.2 is the absolute owner of the land where project in question is to be constructed. The respondent no.1 at the



- time of booking deliberately did not disclose the correct facts regarding ownership of the project land. The complainant was induced to book the above flat by showing brochures and advertisements material depicting that the project will be developed as a state-of-art project and shall be one of its kind.
8. It is submitted that the complainant as such was induced by the representatives of the respondents/promoter to make huge payment towards the sale consideration even before the execution of the agreement. The respondents after receiving a substantial sum of money from the complainant finally executed a pre-printed apartment buyer agreement dated 01.04.2013.
 9. The complainant submitted that the said apartment buyer agreement is totally one sided which imposes completely biased terms and conditions upon the complainant thereby tilting the balance of power in favour of the respondents.
 10. The complainant further submitted that the structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned with sub-standard low grade defective and despicable construction quality. It may be relevant to mention that the other buyers of other projects including the complainant have also complained about the sub-standard products of the respondent. The said benchmark project Avenue 71 is facing multiple litigations on account of low quality work and other serious issues.



11. It is further submitted that the respondents have also charged EDC and IDC to the homebuyers, which has been duly paid by the complainant herein but the same has not been deposited by the respondents with the government. Thus, the intention of the respondents was dishonest since the beginning towards the homebuyers as well as the government. The respondents have also taken money for providing parking facility, thereby not treating the parking space as part of common facilities in blatant contravention of the dicta of the Hon'ble Supreme Court of India.
12. The respondents have breached the fundamental term of the contract by inordinately delaying in delivery of the possession. It is respectfully submitted that some of the home buyers in the present project made complaint to the chairman of this authority during interaction in program "Hello Jagran". Thereafter, in order to mislead the home buyers, the respondent no.1 deputed about 50 labourers as an eye wash. Be that as it may, the project is not nearing completion and the complainant have lost faith in respondents who have taken the complainant and other buyers for a ride by not completing the project.
13. The complainant submitted that despite repeated calls, meetings and emails sent to the respondents, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns



and grievances of the complainant. Complainant further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.

14. As per clause 13 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 01.04.2017. The clause regarding possession of the said unit is reproduced below:

“13.- ...the possession of the said apartment is proposed to be delivered by the company to the allottee within 42 months from the date of execution of this agreement.....however, in case of delay beyond the period of 6 months and such delay is attributable to the company, the company shall be liable to pay compensation @ Rs. 10 per sq. ft. per month of the super area of the apartment for the period of further delay...”

15. Issues raised by the complainant

- I. Whether the respondents/promoters made false representations about the project in question in order to induce the complainants to make a booking?
- II. Whether the respondents/promoters are liable for unjustifiable delay in construction and development of the project in question?
- III. Whether the respondents/promoters is liable to refund the amount deposited by the complainants along with interest @ 18% p.a. along with compensation?



- IV. Whether the respondents/promoters have cheated the complainant by not depositing EDC/IDC with the government?
- V. Whether the respondent has wrongfully demanded parking charges?

16. Relief sought

- I. Direct the respondent to refund a sum of Rs.77,65,607/- along with interest @ 18 % per annum from the date when payments were made till realization of the amount in full.

Respondent's reply

17. The respondents stated that the present complaint is not maintainable in law or facts. The complainant has misdirected herself 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.
18. The respondents submitted that 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 were 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 her loss to the respondents.



19. It is further provided that the time period for delivery of possession was "tentative" and was subject to force majeure events, court indulgence, as provided in the apartment buyer's agreement.
20. It is stated that there has been no deliberate or inordinate delay by the respondents in the completion of construction. The 42 months period provided for delivery of possession expired on 01.10.2016, the additional period of 06 months expired on 01.04.2017 after the execution of the apartment buyer's agreement, the respondents have 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 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. The office of the District Town Planner Enforcement on 10.11.2017 had again directed stoppage of all construction activity.

21. Respondents further submitted that the construction has slowed down for the reasons stated above and 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.
22. Respondents submitted that the construction of the project/apartment is in full swing and in progress despite aforementioned hurdles and that there is no delay and in case of any delay, the complainant is entitled to a reasonable compensation which is already provided in the apartment buyer agreement and the final adjustment could be carried out at the time of delivery of possession and execution of conveyance deed and final payments.
23. It is further submitted that respondent no.2, i.e. M/s Empire Realtech Pvt. Ltd. (wholly owned subsidiary of M/S. CHD Developers Ltd.), is the owner of licensed land and being owner and in possession of the said land, obtained License No. 69 of 2012 from DG, TCP, Chandigarh for setting up of a residential group housing colony named "106 Golf Avenue".



Empire Realtech Pvt. Ltd. had entered into a collaboration agreement with M/S. CHD Developers Ltd. and in terms thereof, M/S. CHD Developers Ltd. is, inter-alia, fully entitled, authorized and competent to carry out development and construction on the said land and to sell/allot residential flats/apartment and to execute agreement/sale deed thereto.

24. Moreover, the complainant had already inspected the licence no.69 dated 29.06.2012 at the time of applying/signing the said application form and the name of licensee (the respondent no.2) is clearly mentioned in the said license.
25. It is denied that the agreement is totally one sided which impose completely biased terms and conditions upon the complainant. The complainant has opted subvention scheme (No Pre Emi Plan) and in terms thereof had applied for housing loan to the HDFC Bank, for the balance payment of the said apartment and as per clause no.2 of the agreement, the respondent was required to pay the pre-emi's on the loan upto 30.10.2014 and thereafter, the allottee/complainant had/have to pay the said EMIs directly to the bank.
26. It is denied that the respondents have not deposited EDC/IDC with the government. It is stated that the respondent has already deposited a sum of towards EDC/IDC irrespective of any external development by HUDA and also filed C.W.P. No. 15096 or 2017 titled "**CHD Developers Limited vs. State of Haryana and others** " inter-alia, challenging the demand of



EDC without undertaking any development work in the area concerned. The petition is pending adjudication before the Hon'ble Punjab and Haryana High Court at Chandigarh.

27. **Issues raised by respondents**

- I. Whether the complainant is misleading this Hon'ble authority by filling false and frivolous complaint against the respondent?
- II. Whether the complainant has furnished all true and relevant facts for adjudicating instant complaint?
- III. Whether the complainant is mere investor and made investment for profit in the said project?
- IV. Whether the complainant is bound by the apartment buyer's agreement executed between the complainant and the respondent?
- V. Whether the relief claimed by the complainant falls within the realm of jurisdiction of this authority?
- VI. Whether the respondents are entitled to hand over the possession of the said apartment in terms of the agreement unless there is delay due to "force majeure", court orders, government policy, guidelines, decisions affecting the regular development of the said project?

Issues decided

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:

28. In respect of the first issue raised by the complainant, the authority is of the view that the complainant has failed to prove that the promoters made false representations about the project.
29. In respect of second issue raised by the complainant, the due date of possession of the project in question was 01.04.2017 and the respondents delayed in handing over the possession.
30. In respect of third issue raised by the complainant, the respondents submitted that the construction of the tower in question is almost complete and mostly only the interior and finishing work is required to be completed and the respondents submitted that the same is in progress and the counsel for respondent made a statement that the said tower no.7 will be completed by April'2019. Keeping in view the interest of other allottees and the completion of the project, the authority is of the view that rather than allowing the refund, it would be better if the complainant is paid interest for every month of delay till the time of handing over the possession. The counsel for complainant stated that in case the authority is not implying to allow refund at this stage, they have no objections regarding granting interest for delayed possession.



31. In respect of fourth issue raised by the complainant, from the statement of the counsel for respondents, it seems that EDC/IDC has been collected from allottees but the same has not been paid to the government, although the promoter is waiting for some amnesty schemes for payment of pending EDC/IDC; so the authority directs DTCP to look into this matter.
32. In regard to fifth issue raised by the complainant, the attention of the authority was drawn to the approval of building plans of the said project by Director, Town & Country Planning vide memo dated 17.09.2012 highlighted by condition no. 13, which is reproduced below:-

“Condition no. 13: The basement shall be used for parking and services as prescribed in the approving zoning plan and building plans. The parking lots proposed in the scheme shall be exclusively for the use of flat owners/residents of the group housing scheme. The parking lot shall not be leased out/transferred to any person who is not a flat owner/resident of the group housing complex. Parking lots shall form part of common areas alongwith other common uses, in the declaration to be filed under Apartment Ownership Act, 1983.”

Further, the counsel for complainant raised the issue that the conditions incorporated in the apartment buyer agreement are against the aforementioned approval, particularly parking charges. From this condition, it is very clear that basement is part of the common areas and meant for exclusive use of flat owners/ residents of group housing scheme.



- For want of sufficient information on the part of counsel of complainant or respondents, the issue cannot be decided. This issue regarding wrongful charging of parking charges be referred to Director, T & CP for clarity and to issue directions to the respondents.
33. Regarding first issue raised by the respondents, the counsel for the respondents failed to prove that the complainant is misleading this authority.
34. Regarding second issue raised by the respondents, the complainant has furnished true and relevant facts.
35. Regarding third issue raised by the respondents, the authority is of the view that it does not make a difference whether the complainant is an investor or otherwise. The complainant is an allottee as per section 2(d) and has every right to approach this authority for redressal of grievances and to file complaint.
36. In regard to fourth issue raised by the respondents, the RERA Act has not re-written the apartment buyer agreement but has only abrogated certain clauses of the agreement which are one-sided and in which the complainant had no say in the pre-printed agreement and the promoter being in the dominant position. The terms of the agreement have been drafted mischievously by the respondents and are completely one sided as also held in para 181 of *Neelkamal Realtors*



Suburban Pvt Ltd Vs. UOI and ors. (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."

37. In regard to fifth issue raised by the respondents, the relief claimed by the complainant falls within the realms of jurisdiction of this authority except the compensation demanded by the complainant. If the complainant is also interested in compensation proceedings, she can directly approach the adjudicating officer in this regard.
38. The complainant makes a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



"34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

39. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and

fulfil obligation under section 37 of the Act which is reproduced below:

“37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

40. The complainant reserves her right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

41. **Jurisdiction of the authority-** 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.

42. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that the respondents have committed a revised time up till April, 2019 for handing over the possession to the allottees. The



relief sought in point 'I' by the complainant cannot be allowed in this shape as has been demanded but has been modified keeping in view the interest of other allottees and in interest of the completion of the project in question. However, the respondents are bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainant for every month of delay on the 10th of every succeeding month from the due date of possession, i.e. 01.04.2017 till the handing over the possession of the unit in April 2019. The respondents are also directed to pay the amount of interest at the prescribed rate from 01.04.2017 to 13.09.2018 on the deposited amount within 90 days from the day of this order. The complainants must wait till 30th April, 2019 for the respondent to fulfil its commitment and deliver the possession and in case of any default in the handing over of possession, the complainants shall be at liberty to demand refund of money with the prescribed interest. Further, the complainants must also complete the payment due on their part.



Decision and directions of the authority

43. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondents:
- (i) The respondents are directed to give the physical possession of the said flat to the complainant on the date committed by

the respondents for handing over the possession, i.e. by 30.04.2019.

- (ii) The respondents are directing to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from 01.04.2017 to 13.09.2018 on the deposited amount within 90 days from the day of this order and thereafter, on the 10th of every succeeding month.
- (iii) If the possession is not given on the date committed by the respondent, i.e. 30.04.2019 then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. section 19(4) of the Act *ibid*.
- (iv) The issue regarding wrongful charging of parking charges and deposit of EDC/IDC by the respondents be referred to Director, T & CP for clarity and to issue directions to the respondents.
44. The complaint is disposed of accordingly.
45. The order is pronounced.
46. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch to initiate penal



proceedings as the project has not been registered.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

