

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 04.09.2018
Complaint No.	309/2018 Case titled as Mr. Vinay Kumar Verma V/s M/s Chirag Buildtech Pvt. Ltd.
Complainant	Mr. Vinay Kumar Verma
Represented through	Complainant in person
Respondent	M/s Chirag Buildtech Pvt. Ltd.
Respondent Represented through	Shri Sumit Kumar, Advocate for the respondent
Last date of hearing	18.7.2018

Proceedings

The project is registered.

Arguments advanced by the counsel for the parties have been heard. The counsel for the respondent has submitted that the project is likely to be completed by the year 2021. Licence was granted in the year 2017. The complainant has alleged that he had paid the entire cost of the unit to the respondent. He has further stated that the project is under the affordable scheme. He has requested to refund the deposited amount after deducting earnest money of Rs.25,000/- as agreed.

The Builder Buyer Agreement was executed between the parties on 2.11.2017. As per clause 3.1 of the agreement, the possession was to be handed over to the complainant within 4 years from the date of approval of

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

building plans or grant of environment clearance, whichever is later. It is ordered that the deposited amount be refunded to the complainant by the respondent after deducting Rs.25,000/- within 90 days from today. The complaint is disposed of accordingly. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
04.09.2018

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

Complaint No. : 309 of 2018
First date of hearing: 18.07.2018
Date of Decision : 04.09.2018

Mr. Vinay Kumar Verma,
R/o. F-66B, Second floor, street no. 12, Patel
Paric, Mahalaxmi Nagar, New Delhi-110092

Complainant

Versus

M/s Chirag Building Private Ltd.
Regd. Office: 359/1B, Punjabi Bazar, Kotla,
Muarakpur, New Delhi-110003.

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Vinay Kumar Verma
Shri Sumit Kumar

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 22.05.2018 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, Mr. Vinay Kumar Verma, against the promoter, M/s Chirag Building Private Ltd., on account of violation of the clause 3.1 of the apartment buyer's agreement executed on 02.11.2017 in



respect of Sector 95, Gurugram462, in the project 'Rof Ananda' for not handing over possession on the due date i.e. by the year 2021 which is an obligation under section 11(4)(a) of the Act ibid.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Rof Ananda", Sector 95, Gurugram
2.	DTCP No.	17 dated 25 th October
3.	Flat measuring	645.29 sq. ft of the carpet area and 86.20 sq.ft balcony area
4.	Total Land Measuring	5.04375 acres
5.	RERA registered/ not registered.	Not registered
6.	Date of execution of apartment buyer's agreement	02 nd November 2017
7.	Payment plan	Time linked payment plan
8.	Basic sale price	Rs.26,24,260/-
9.	Total amount paid by the complainant till date	Rs. 7,34,793/-
10.	Date of delivery of possession as per clause 3.1 of apartment buyer's agreement (48 Months from the date of approval of building plans or grant of environment clearance , whichever is later)	By the year 2021
11.	Delay in handing over possession till date	No delay, premature



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment

according to which the possession of the same was to be delivered by 2021.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 18.07.2018. The case came up for hearing on 18.07.2018 & 04.09.2018. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply.

Facts of the complaint:

5. Briefly stated, the facts of the case as culled out from the case the complainant made a payment of Rs. 1,31,215/- as a first instalment and Rs.6,03,578/- as second instalment and remaining amount was required to be paid in instalments as specified in the terms of the contract.
6. The complainant made a loan application to HDFC Ltd. referred to as lender 1 and LIC Housing Finance referred to as Lender 2 and the application was rejected on the ground that the project has some technical issues and the stage of construction is not satisfactory and no work has been carried on the site



7. Due to the rejection by the lenders the complainant has not been able to pay the remaining amount and the respondent intimated that interest @ 15% p.a. will be levied for the default made in the payment.
8. The respondent abused the complainant and refused to refund the whole amount and agreed to pay the amount after deducting the earnest money and the statutory taxes.
9. The respondents have faced cancellations from many applicants due to certain reasons.
10. **Issues raised by the complainants are as follow:**
 - i. Whether the respondent has the right to insist complainant to take loan from the respondents bank?
 - ii. Whether the complainant is liable to pay an interest @15% p.a for the default made in the payment?
11. **Relief sought:**

The complainant is seeking the following relief:

- i. To issue directions to revoke the agreement and refund the whole amount to the complainant including interest.
- ii. To impose penalty to the respondent for delay in commencement of project due to which no lender is sanctioning the loan for the said property



12. **Reply:**

13. The respondent submitted that the authority bear no reference to the act and the rules and the authority has no jurisdiction to adjudicate the dispute in exercise of its jurisdiction under section 31 of the act read with rule 28 of the rules.

14. The complaint is not maintainable because the disputes raised in the complaint are already pending before the Gurugram Police.

15. **Determination of Issues:**

16. No, the respondent do not have the right to insist the complainant to take loan from the respondents choice.

17. The complainant is not required to make an interest payment of 15% for the default in payment was granted to the respondent.

18. Accordingly, the due date of possession was 2021. The terms of the agreement have been drafted mischievously by the respondent 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."

19. The complainant made 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.

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 and fulfil obligation 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.



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

Decision and directions of the authority

20. 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 respondent in the interest of justice and fair play:

- (i) The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to 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.
- (ii) The respondent is ordered to refund the amount deposited by the complainant with the respondent.



- (iii) The respondent is required to refund the deposited amount after deducting Rs. 25,000/- within 90 days from the date of order.
- (iv) The respondent is directed to allow the complainant to visit the project site freely.
- (v) The respondent is further directed to apply for registration of the project within fifteen days from 04.09.2018.

21. The complaint brought to the notice of the authority that quality of construction is not up to the mark. The allottee may visit the site to ascertain the quality of construction. As per section 14 of the Real Estate (Regulation and Development) Act, 2016, the promoter is duty bound to comply with the. The promoter is also directed to carry out construction as per approved specifications. In case, it comes to the notice of the authority that quality of construction is not as per specifications, it will be treated as violation of the directions of the authority and necessary penal proceedings shall be initiated against them.

22. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.



23. The order is pronounced.
24. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date : 04.09.2018

