

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

Complaint no. : 322 of 2018
First date of hearing: 19.07.2018
Date of decision : 16.10.2018

Mr. Rajesh Kumar Khatkar
R/o. H.No.2790, Sector-3,
Rohtak, Haryana.

Complainant

Versus

1. M/s CHD Developers Ltd.
(Through its directors)
2. M/s Empire Realtech Pvt. Ltd.
Both Addressed at: SF-16-17,
1st Floor, Madam Bhikaji Cama Bhawan
11, Bhikaji Cama Place,
New Delhi-110066.

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Rajesh Kumar Khatkar Complainant in person
Shri Vaibhav Suri Advocate for the complainant
Shri Anup Gupta Advocate for the respondent



ORDER

1. A complaint dated 24.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Rajesh

Kumar Khatkar, against the promoter M/s CHD Developers Ltd. and M/s Empire Realtech Pvt. Ltd.

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

1.	Name and location of the project	"106 Golf Avenue", Sector 106, Gurugram.
2.	Project area	12.344 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no.	69 of 2012
5.	License holder	M/s Empire Realtech Pvt. Ltd.
6.	RERA registration no.	Not registered but applied for registration on 31.07.2017
7.	Flat/apartment/unit no.	T01-01/02, tower no. T01
8.	Flat measuring	1657 sq. ft.
9.	Date of execution of apartment buyer's agreement	13.04.2015
10.	Payment plan	Construction linked payment plan
11.	Total consideration amount as per statement of account dated 23.03.2018	Rs.1,02,10,418/- (excluding service tax)
12.	Basic sale price	Rs.87,54,560/-
13.	Total amount paid by the complainant till date	Rs.98,38,950/-
14.	Percentage of consideration amount	Approx. 96 percent
15.	Date of delivery of possession as per clause 13 of the said agreement (42 months + 6 months grace period from the date of execution of the said agreement)	13.04.2019
16.	Delay in handing over possession till date	Premature
17.	Penalty clause as per flat buyer's agreement dated 13.04.2015	Clause 13 of the said agreement i.e. Rs.10/-



		per sq. ft. per month of the super area of the apartment for the period of further delay.
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3. The details provided above have been checked as per record available in the case file which have been provided by the complainant and the respondents. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared on 19.07.2018. The case came up for hearing on 19.07.2018, 04.09.2018, 19.09.2018 and 16.10.2018. The reply has been filed on behalf of the respondents have been perused. The respondents have supplied the details and status of the project in form of affidavit on 14.09.2018.

Facts of the complaint

4. Briefly stated, the facts of the complaint are that the complainant booked a residential flat in the project of the respondent namely "106 Golf Avenue", Sector 106, Daultabad Village, Gurugram, Haryana.
5. 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 apartment buyer 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 complainant submitted that he 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. It was stated that the CHD Developers “106 Golf Avenue” is a premium high-end multi-storey project being developed with the assistance of internationally renowned architects. There were about 50 amenities offered at the time of booking. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

6. The complainant submitted that the respondents after receiving a substantial sum of money from the complainant, finally executed a pre-printed apartment buyer’s agreement dated 17.12.2012 by virtue of which the respondents allotted apartment bearing no. T02-09/01, tower no. 02, having saleable area of 1183 sq. ft. The complainant submitted that in order finance the aforesaid flat, he had availed financial assistance from HDFC Bank and in regard to that the complainant had mortgaged his booked flat with the bank as



collateral security. A tri-partite agreement was executed between the complainant, respondents and HDFC Bank.

7. The complainant submitted that the respondents continuously pursued the complainant in order to somehow induce him to opt for a bigger flat than what had been originally booked by him with the respondents. The complainant was swayed by the false assurances and representations of the respondent and ultimately gave in to the demands of the respondents. A fresh allotment letter and apartment buyer agreement was executed on 13.04.2015 by the respondent vide which the complainant was allotted flat bearing no. 106-T01-01/02 on 1st floor, in tower 1 measuring 1657 sq. ft. It is pertinent to mention that it was mutually agreed that for the purposes of delay penalty clause as mentioned in the apartment buyer's agreement, the date of apartment buyer's agreement originally executed on 17.12.2012 shall be considered.

8. The complainant submitted that he was induced by the representatives of the respondents to make huge payment towards the sale consideration even before the execution of the apartment buyer agreement. The complainant made a payment of Rs.6,00,000/- on 27.09.2012 and thereafter the complainant on demands being raised by the respondents



made further payments. The complainant till date have made a total payment of Rs.98,38,942/- against the total sale consideration and the balance payment was to be made at the time of offering of possession. The complainant submitted that the said apartment buyer's agreement is totally one sided which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondents.

9. The complainant submitted that the respondents promised to complete the project within a period of 42 months from the date of execution of the apartment buyer agreement with a further grace period of six months. The initial apartment buyer's agreement was executed on 17.12.2012 and till date the construction is not complete, which is resulting in extreme kind of mental distress, pain and agony to the complainant.

10. The complainant submitted that he made visits at the site and observed that there are serious quality issues with respect to the construction carried out by respondents till now. The flats were sold by representing that the same will be luxurious apartment however, all such representations seem to have been made in order to lure complainant to purchase the flats at extremely high prices. The respondents have compromised



with levels of quality and are guilty of mis-selling. There are various deviations from the initial representations. 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.

11. The complainant submitted that the respondents have also charged EDC and IDC to the home buyer's, 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 towards the government.
12. The complainant submitted that 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. The project is not nearing completion and the complainant has lost faith in respondents.



13. The complainant submitted that the respondents have not acknowledged the requests of the complainant in regard to the status of the project. The promised amenities are missing. The complainant was forced to make advance deposit on the basis of information contained in the brochure, which is false on face of it as is evident from the construction done at site so far. The main attraction of the project was a six hole golf course, which is nowhere seen at site. In this regard the complainant addressed several emails which were completely ignored and not responded to by the respondents herein.
14. The complainant submitted that the license of the said project has not been renewed. The same is further substantiated by the factum that the respondents have not got the project registered with RERA. It may be relevant to mention that demand of internal plaster was made in February, 2015 while demand for flooring was raised in June, 2017. This was also a farce as there was no work going on at site in June, 2017 or thereafter.
15. The complainant submitted that respondents have committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as



mentioned in preceding paragraph. The project has been inordinately delayed. The respondents have resorted to misrepresentation. The complainant therefore is seeking refund of its entire investment along with interest @ 18% p.a. as well as compensation.

16. The issues raised by the complainant are as follow:

- i. Whether the respondents made false representations about the project in question in order to induce the complainant to make a booking?
- ii. Whether the respondents are liable for unjustifiable delay in construction and development of the project in question?
- iii. Whether the respondents are liable to refund the amount deposited by the complainant along with interest @ 18% p.a. along with compensation?
- iv. Whether the respondents have cheated the complainant by not depositing EDC/IDC with the government?
- v. Whether the respondents have wrongfully demanded parking charges?

Relief sought

17. The complainant is seeking refund of a sum of Rs.98,38,942/-



along with interest @ 18% per annum from the date when payments were made till realisation of the amount in full.

Respondent's reply

18. The respondents submitted that it is renowned real estate company engaged in the business of construction and real estate. The 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 (i.e. 12.344 acres, in Village Daultabad, Sector 106, Gurugram) 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.

19. The respondents specifically denied that they have induced the complainant at any point of time to book the said apartment or to sign application form. It is submitted that complainant after conducting due diligence pertaining to



rights, interest, title, limitation and obligations of the respondents, had initially decided to apply for booking and allotment of residential apartment/flat at tower no.2 in the said project vide his application form dated 21.09.2012. The respondent issued an allotment letter dated 08.10.2012 to the complainant allotting residential flat no.CVN-T02-09/01 (2BHK) measuring 1183 sq. ft. in the said project. The complainant opted for construction linked payment plan and also executed an apartment buyer's agreement dated 17.12.2012 w.r.t. the said flat.

20. The respondents submitted that the complainant vide his email dated 28.02.2015 requested the respondent for allotment of another 3BHK unit/apartment and thereby surrendered the above stated 2BHK unit.
21. The respondents submitted that in pursuance thereof, the complainant has decided to apply for booking and allotment of residential 3BHK apartment/flat at tower no.01 in the said project vide his application form dated 13.04.2015. Accordingly, the respondents issued an allotment letter dated 13.04.2015 to complainant allotting residential flat no.T01-01/02 (3BHK) measuring 1657 sq. ft. in the said project. The complainant had opted for construction linked payment plan and also agreed to pay total consideration of



Rs.1,02,43,557.66/- excluding other charges/registration fee etc. The complainant has also executed apartment buyer's agreement dated 13.04.2015 w.r.t. allotment of residential flat no. T01-01/02 (3BHK) in the said project.

22. The respondents submitted that the complainant had paid a sum of Rs.60,42,014/- towards allotment of above referred flat no.CVN-T02-09/01 (2BHK) and the respondents had agreed to refund his entire paid amount of Rs.60,42,014/- to the complainant. However, the complainant had requested to the respondents to adjust his entire amount of Rs.60,42,014/- towards booking/allotment of the residential flat no. T01-01/02 (3BHK) and also undertaken to make the balance payment of said allotment in terms of plan opted by him. The respondents considered his request and adjusted his entire refundable amount of Rs.60,42,014/- towards allotment of residential flat no. T01-01/02 (3BHK) vide receipt dated 13.04.2015. It is denied that the complainant was induced to opt for a bigger flat as falsely and dishonestly alleged by the complainant.

23. The respondents denied that the complainant was induced to make huge payment towards sale consideration even before execution of the apartment buyer agreement. It is stated that the complainant paid Rs.6,00,000/-vide receipt dated



27.09.2012 towards booking/allotment of flat no.CVN-T02-09/01 (2BHK) not towards booking/allotment of flat no. T01-01/02 (3BHK) as the complainant has applied for booking of apartment in question in instant complaint i.e. Flat No. T01-01/02 (3BHK) on 13.04.2015 vide his application form dated 13.04.2015.

24. The respondents denied that the agreement is totally one sided which impose completely biased terms and conditions upon the complainant. It is stated that the complainant had agreed and undertaken to make the payment in a timely period as per the construction linked payment plan on the demand being raised by the respondents.
25. The respondents submitted that the complainant without expiry of time of handing over possession of the apartment as stated and agreed in the apartment buyer's agreement dated 13.04.2015 above and without fault of the respondents has filed instant complaint against the respondents. The possession of the said apartment is proposed to be delivered by the respondents to the complainant within 42 months (which period is to be expired on 13.10.2018) (plus 6 months grace period-which period is to be expired on 13.04.2019) from the date of execution of apartment buyer's agreement, which period is not expired yet.



26. The respondents submitted that the complainant have misdirected himself 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.
27. The respondents submitted that there has been an inordinate delay by the respondents in completing the project w.r.t. other allottee/s and since, the time of handing over possession of the complainant's apartment as stated and agreed in the apartment buyer's agreement dated 13.04.2015 above not expired and is to be expired on 13.04.2019 and therefore the complainant is not entitled for refund of money along with interest.
28. The respondents submitted that in actual fact, the real purpose of the complainant is to seek refund of money with interest because of a severe slump/decline in the prices of properties. The complainant who was 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 his/her loss to the respondents.



29. The respondents submitted that the parties had executed an apartment buyer's agreement on 13.04.02015. In terms of the apartment buyer's agreement, the complainant had agreed to purchase the apartment bearing no. T01-01/02 in tower no. 01 of the residential group housing colony named "106 Golf Avenue" in Sector-106, Gurugram, Haryana for a total consideration amount of Rs.1,02,43,557.66/- excluding other applicable taxes and charges. The respondents submitted that the time period for delivery of possession was "tentative" and was subject to force majeure events, court indulgence, as provided in the said agreement.
30. The respondents submitted 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 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 respondents 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 respondents 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.

31. The respondents submitted that the construction has slowed down for the reasons stated above and also because of a severe slump in the real estate market. However, 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 and even period of handing over the possession of the said apartment as mentioned in the said agreement is not expired yet.



32. The respondents submitted that the construction of the said project is in full swing and in progress despite severe slump in the real estate market and decline in the prices of properties. The construction 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.

33. The respondents submitted that there is no delay as such and in case of any delay, the complainant is entitled to a reasonable compensation which is already provided in the apartment buyer's agreement and the final adjustment could be carried out at the time of delivery of possession and execution of conveyance deed and final payments.

34. The respondents submitted that the photographs of tower no.1 wherein the complainant has booked and allotted the said apartment is annexed as annexure 11 with the reply filed by the respondents. From photographs it is clearly evident that the structure of tower no.01 is completed almost 100%. The complainant has made baseless allegations regarding construction and quality of construction.

35. The respondents denied that it has not deposited EDC/IDC with the government. It is stated that the respondent has



already deposited a sum of Rs.4,76,97,141/- 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. Moreover, the construction of said project is on verge of completion and hence, the allegation of the complainant regarding dishonest intention is baseless.

36. The respondents submitted that it has also applied well in time for renewal of license under policy framed on dated 21.09.2018 vide application for renewal dated 03.10.2018 and 08.10.2018 and also applied for registration under HRERA on 31.07.2017.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

37. With respect to the **first issue** raised by the complainant, the authority is of the view that the complainant has failed to



prove that the promoter has made false representations about the project.

38. With respect of **second and third issue** raised by the complainant, the due date of possession of the project in question is 13.04.2019. The present complaint is premature in respect of delay in handing over the possession and refund also cannot be allowed.

As per clause 13 of apartment buyer's agreement, the possession of the flat was to be handed over within 42 months from the date of execution of this agreement (with a grace period of 6 months). The agreement was executed on 13.04.2015. The clause regarding the possession of the said unit is reproduced below:

"13 Time of Handing Over Possession

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 from the date of execution of this agreement... The company shall be entitled to six months additional grace period in the event of delay in handing over the possession..."

39. Accordingly, the due date of possession is 13th April 2019. The due date of possession has not been crossed so far, the interest for the delayed possession as per section 18(1) of the Act has not yet accrued.



40. With respect of **fourth issue** raised by the complainant, the question regarding EDC is *sub judice* before Hon'ble Punjab and Haryana High Court in C.W.P. no. 15096 of 2017 titled as "**CHD Developers Limited Vs. State of Haryana and others**".
41. With 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 and 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 along with 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's 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 DTCP, Chandigarh for clarity and to issue directions to the respondents.

Findings of the authority

42. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.
43. In the present complaint, the complainant has changed his opinion and opted for a 3BHK flat instead of 2 BHK flat.



Accordingly, a new apartment buyer's agreement for 3 BHK flat was executed between the parties on 13.04.2015. On the date of execution of this subsequent agreement, an approximate amount of Rs.60 lakhs was already being paid by the complainant according to the prior agreement. The same amount was adjusted in the payment to be made in respect of 3 BHK flat. Till date the complainant has paid an amount of Rs.98,38,942/- including the amount adjusted.

44. Although, the respondents were entitled to take only Rs.9 lakhs as per the construction linked plan of the subsequent agreement, but he accepted the money cumulatively. Hereby, the respondent is liable to give interest to the complainant at the prescribed rate of interest i.e. 10.45% per annum for the excess amount taken. However, as per the subsequent agreement, the due date of possession is 13.04.2019 which has not been crossed so far, therefore, the complaint is premature and the interest for the delayed possession as per section 18(1) of the Act has not yet accrued.

Directions of the authority

45. 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 direct the respondents in the interest of justice and fair play to give interest to the buyer at the prescribed rate of interest i.e. 10.45% per annum for the excess amount taken by the respondents.

46. The order is pronounced.

47. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 16.10.2018

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 16.10.2018
Complaint No.	322/2018 Case titled as Mr. Rajesh Kumar Khatkar V/s CHD Developers Ltd. & Anr
Complainant	Mr. Rajesh Kumar Khatkar
Represented through	Shri Vaibhav Suri Advocate for the complainant.
Respondent	CHD Developers Ltd. & Anr
Respondent Represented through	Shri Anup Gupta Advocate for the respondent.
Last date of hearing	19.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Counsel for the respondent has filed an application alongwith relevant documents for placing on record. Copy of the same has been supplied to the counsel for the complainant.

After hearing the arguments advanced by counsel for both the parties and as per clause 13 of the BBA dated 13.4.2015, the due date of possession is 13.4.2019. However, as stated by the counsel for the complainant, he has made payment of Rs.60 Lakhs.

Complainant booked a 2 BHK flat and the Builder Buyer Agreement was executed inter-se the parties on 17.12.2012. As per

agreement, due date of possession was 17.12.2016 (42 + 6 months as grace period). Complainant had already paid Rs.60 Lakhs approximately to the respondent before 13.4.2015 for earlier booking of the flat.

Thereafter the complainant has changed his option and opted for a bigger flat instead of 2 BHK flat and for this another BBA was executed inter-se the parties on 13.4.2015. As per this BBA, the due date of possession is 13.4.2019. The complainant till date has paid an amount of Rs.98,38,942/- including Rs.60 Lakhs paid earlier.

Builder was entitled to take only Rs.9 Lakhs as per the construction linked plan whereas he has accepted money cumulatively in one go. The payment plan is to be taken as construction linked plan and as such builder is liable to adjust the amount on due date as per the CLP plan and he is liable to give interest to the buyer at the prescribed rate of interest i.e. 10.45% per annum for the excess amount otherwise the complaint is premature as per the BBA. The complaint is disposed of accordingly. Detailed order shall follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)