

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

**Complaint No. : 307 of 2018**  
**Date of first hearing : 18.07.2018**  
**Date of Decision : 16.10.2018**

Mr. Raj Singh Rathi  
R/o 6006/3, Sector-D, Pocket-6,  
Vasant Kunj, New Delhi - 110070 **...Complainant**

Versus

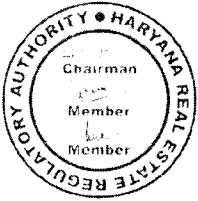
1. M/s CHD Developers Ltd.  
2. M/s Empire Realtech Pvt. Ltd.  
Office at: SF-16-17, First Floor,  
Madam Bhikaji Cama Bhawan, Bhikaji Cama **...Respondents**  
Place, New Delhi- 110066

**CORAM:**

Dr. K.K. Khandelwal **Chairman**  
Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Vaibhav Suri **Advocate for the complainant**  
Shri Anup Gupta **Advocate for the respondent**



**ORDER**

1. A complaint dated 22.05.2018 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. Raj Singh

Rathi, 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 14.12.2012 for unit no. T07-12/03 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, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	T07-12/03
4.	Project area	12.344 acres
5.	Registered/ not registered	Not registered. Applied for registration
6.	DTCP license	69 of 2012
7.	Date of booking	19.09.2012 (as per annexure-3)
8.	Date of apartment buyer's agreement	14.12.2012
9.	Total consideration	Rs. 88,19,609/- (as per annexure-3)
10.	Total amount paid by the complainant	Rs. 80,96,281/-
11.	Payment plan	Construction linked plan
12.	Date of delivery of possession.	Clause 13 - 42 months from date of agreement, i.e. 14.06.2016 + 6 months



		grace period i.e. 14.12.2016
13.	Delay of number of months/ years upto 16.10.2018	1 year 10 months
14.	Penalty clause as per builder buyer agreement dated 14.12.2012	Clause 13- Rs. 10/- per sq. ft. per month of the super area

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 respondents. An apartment buyer's agreement is available on record for unit no. T07-12/03 on 12<sup>th</sup> floor, tower no. T07 according to which the possession of the aforesaid unit was to be delivered by 14.12.2016. 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 18.07.2018. The case came up for hearing on 18.07.2018, 04.09.2018, 19.09.2018. The reply has been filed on behalf of the respondent on 14.08.2018. A rejoinder was filed by the complainant wherein he denied the submissions of the



respondents in the reply and re-asserted the facts stated in the complaint.

### **Facts of the complaint**

5. On 19.09.2012, the complainant booked a unit in the project named "106 Golf Avenue" in Sector 106, Gurugram by paying an advance amount of Rs 8,00,000/- to the respondents. Accordingly, the complainant was allotted a unit bearing T07-12/03 on 12<sup>th</sup> floor.
6. On 14.12.2012, apartment buyer's agreement was entered into between the parties wherein as per clause 13, the construction should have been completed within 42 months from the date of execution of agreement + 6 months grace period, i.e. 14.12.2016. 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 respondent. The complainant made payments of all instalments demanded by the respondents amounting to a total of Rs 80,96,281/-.
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 apartment buyer's agreement, the complainant and other homebuyers 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 representatives of the respondent no.1 made tall claims about the brand value of CHD Developers Limited and further stated that the proposed project shall be developed and designed by a team of ace architects and finest structural designers to meet each and every quality and design standards.

8. The complainant further submitted that the 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. The complainant made visits at the site and observed that there are serious quality issues with respect to the construction. The respondents have compromised even with the basic features, designs and quality to save costs. 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.



9. 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.
10. As per clause 13 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 14.12.2016. The clause regarding possession of the said unit is reproduced below:

*“13- 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 6 months additional period in the event there is delay in handing over possession.....”*

**11. Issues raised by the complainant**



- I. Whether the respondents/ promoters made false representations about the project in question in order to induce the complainant 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 are liable to refund the amount deposited by the complainant along with interest @18% p.a. along-with compensation?
- IV. Whether the respondents/ promoters have cheated the complainant by not depositing the EDC and IDC with the government?
- V. Whether the respondents have wrongfully demanded parking charges?

**12. Relief sought**

- I. Direct the respondents to refund a sum of Rs. 89,96,281/- along with interest @ 18% per annum from the date when payments were made till realization of the amount in full.

**Respondent's reply**

13. The respondents submitted that the complaint filed by the complainant before the hon'ble authority, besides being misconceived and erroneous, is untenable in the eyes of law. The reliefs claimed by the complainant does not fall within the jurisdiction of this authority.
14. The respondents submitted that the real purpose of the complainant is to seek refund of money with interest because of a severe decline in the price of the properties. The



complainant realised that they will not be able to make profit on their investment because of the crash of prices of properties in the real estate market and thus, is seeking to pass his/her loss to the respondents.

15. The respondents respectfully submitted that the time period for delivery of possession was “tentative” and was subject to force majeure events, court indulgence, as provided in the agreement. The complainant has sought to wrongly portray as if no work has been carried out and that the construction is far from completion. In fact, to the contrary, the construction is almost complete and mostly only the interior and finishing work is required to be completed and the respondent submitted that the same is in progress.

16. The respondents further submitted that there has been no deliberate or inordinate delay by the respondents in the completion of the construction. After the execution of the 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 opposite party that “vide order dated 07.04.2015 and 10.04.2015 in original application no.21 of 2014 titled as ***“Vardhaman Kaushik v 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.

17. Respondents further submitted that the construction is in full swing and is in progress despite severe slump in the real estate market and decline in the prices of properties.



18. 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.

19. 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.
20. 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.
21. It is denied that the respondents have not deposited EDC/IDC with the government. It is stated that the respondents have 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.

### **Determination of issues**

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:

22. 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. No concrete proof in support of this contention has been furnished by the complainant.
23. In respect of **second issue** raised by the complainant, the due date of possession of the project in question was 14.12.2016 and the respondents delayed in handing over the possession. Thus, the respondent is held liable for unjustifiable delay in construction and development of the project in question.



24. In respect of **third issue** raised by the complainant, the respondents submitted that the construction of the tower in question is almost complete and only the interior and finishing work is required to be completed and the respondent 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 status of the project, 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.



25. 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, so the authority hereby directs the respondent to immediately deposit the amount of EDC and IDC already collected by him from the allottees.

26. 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.

Therefore, this issue regarding wrongful charging of parking charges be referred to Director, T & CP for clarification and to issue directions to the respondents accordingly.

27. The RERA 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 are drafted mischievously by the respondents as in this case 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.”*

28. 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.”*

29. 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."*

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

### **Findings of the authority**

31. **Jurisdiction of the authority-** The respondent admitted that as the project '106 Golf Avenue' is located in sector 106, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

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.

32. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that the respondents have filed an affidavit and committed a revised time up till February 2019 to complete the project and for handing over the possession to the allottees. Counsel for the complainant has stated that their flat is situated in tower no.7 and as per the affidavit submitted by the counsel for the respondent the tentative date of possession is February 2019. The project has already been delayed for more than one year and 10 months, as such the builder is liable for payment of interest at the prescribed rate i.e. 10.45% to the buyer as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. If the builder fails to deliver the possession on the committed date i.e. February 2019, in that case, the complainant can seek refund alongwith prescribed rate of interest w.e.f. 14.12.2016. The arrears of interest accrued so far shall be paid within 90 days from the issuance of this order and thereafter monthly payment of interest shall be paid before 10<sup>th</sup> of subsequent month till handing over the possession. The project is not registered at the moment and





the respondents must submit the registration application immediately. Further, the complainants must also complete the payment due on their part.

### **Decision and directions of the authority**

33. 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 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 28.02.2019.
- (ii) The respondents are directed to give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant for every month of delay in handing over the possession. The interest will be given from 14.12.2016 to 16.10.2018 on the deposited amount within 90 days from the date of this order and thereafter, for every month of delay on the 10<sup>th</sup> of every succeeding month till the handing over of possession.
- (iii) If the possession is not given on the date committed by the respondents, i.e. February 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 be referred to Director, T & CP for clarification and to issue directions to the respondents.
- (v) The respondents are directed to immediately deposit the amount of EDC and IDC already collected by him from the allottees.
- (vi) The respondents are directed to submit the required documents for registration of the project within a week failing which penalty proceedings shall be initiated under section 59 of the Act *ibid*.
34. The complaint is disposed of accordingly.
35. The order is pronounced.
36. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch to initiate penal proceedings for not registering the project.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Date: 16.10.2018

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 16.10.2018
Complaint No.	307/2018 Case titled as Mr. Raj Singh Rathi V/s M/s CHD Developers Ltd.& Anr.
Complainant	Mr. Raj Singh Rathi
Represented through	Shri Vaibhav Suri Advocate for the complainant.
Respondent	M/s 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.

Arguments advanced by the learned counsels for both the parties heard. As per the statement of the counsel for the respondent that the builder has filed an affidavit w.r.t to delivery of possession i.e. **February 2019**. Counsel for the complainant has stated that their flat is situated in **Tower No.7** and as per the affidavit submitted by the counsel for the respondent, the tentative date of possession is **February 2019**. Project has already been delayed for more than one year and 10 months and as such the builder is

liable for payment of interest at the prescribed rate i.e. 10.45% to the buyer as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. If the builder fails to deliver possession on the committed date i.e. February 2019, in that case, the complainant can seek refund alongwith prescribed rate of interest w.e.f. 14.12.2016 till the committed date of possession. The arrears of interest accrued so far shall be paid within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10<sup>th</sup> of subsequent month till handing over the possession. Project is not registered at the moment. Respondent is directed to submit the required documents for registration of the project within a week failing which penalty proceedings shall be initiated under section 59 of the Act ibid. The complaint is disposed of accordingly. Detailed order shall follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
16.10.2018