

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

**Complaint No. : 305 of 2018**

**First date of hearing : 18.07.2018**

**Date of Decision : 16.10.2018**

1. Mrs. Vijay Rekhi
  2. Mr. Vishal Rekhi
- ...Complainants**
- R/o Flat no. 132, Sarojini Nagar  
Market, New Delhi-110023

Versus

1. M/s CHD Developers Ltd.
  2. M/s Empire Realtech Pvt. Ltd.
- R/o 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 Vaibhav Suri  
Shri Anup Gupta

Advocate for the complainants  
Advocate for the respondents

**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 complainants Mrs. Vijay



Rekhiand Mr. Vishal Rekhi, against the promoters M/s CHD Developers Ltd. and M/s Empire Realtech Pvt. Ltd., on account of violation of clause 18(a) of the builder-buyer agreement executed on 13.12.2012 for unit no. T-03-12/03, tower no. T03 having 1633 sq.ft. approx. in the project “106 Golf Avenue”, Sector-106, Gurugram 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 Sector-106 Gurugram
2.	Registered/ unregistered	Registered
3.	Unit no.	T-03-12/03
4.	Date of agreement	13.12.2012
5.	Total cost	Rs. 94,17,302.50/-
6.	Total amount paid by the complainant	Rs. 82,22,590.86/-
7.	Percentage of consideration amount	87% approx.
8.	Date of delivery of possession.	Clause 13 within 42 months from the date of execution of this agreement + 6 months grace period i.e 13.12.2016
9.	Delay of number of months/ years upto 30.08.2018	1 Year 10 months
10.	Penalty clause as per builder buyer agreement dated	Clause 13- Rs. 10/- per sq. ft. per month
11.	Cause of delay in delivery of possession	Due to force majeure



3. The details provided above, have been checked as per record of the case file. A apartment buyer agreement is available on record for unit no. T03-12/03 according to which the possession of the aforesaid unit was to be delivered by 13.12.2016. The promoter has failed to deliver the possession of the said unit to the complainants by the due date as per apartment buyer agreement dated 13.12.2012. 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 and 16.10.2018. The reply has been filed on behalf of the respondents on dated 14.08.2018.

#### FACTS OF COMPLAINTS

5. The complainants booked a residential flat in the project of the respondent "106 Golf Avenue" at Sector-106, Gurgaon in Daultabad Village, Gurgaon ,Haryana.
6. The complainants submitted that at the time of booking respondent1 represented that he is the absolute owner of land where the proposed project is supposed to be developed. However, at the time of execution of theABA the



complainants gained knowledge that the respondent 2 is the absolute owner of the land where project in question is to be constructed. Also, at the time of booking respondent 1 deliberately did not disclose the correct facts regarding ownership of the project land.

7. The complainants submitted that the respondents after receiving a substantial sum of money from the complainants finally executed an apartment buyer's agreement dated 13.12.2012 by virtue of which the respondents allotted apartment bearing no. T-03-12/03 in tower no.03, having saleable area of 1633 sq. ft. and the complainants till date have made a total payment of Rs. 82,22,590/- against the total sale consideration.
8. The complainants 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.
9. The complainants submitted that the respondents have also charged EDC and IDC to the homebuyers, which has been duly paid by the complainants herein but the same has not been deposited by the respondents with the government. Thus, the intention of the respondents was dishonest since



beginning towards the homebuyers as well as towards the government.

#### 10. 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 are liable to refund the amount deposited by the complainants along with interest @18% p.a. along with compensation?
- iv. Whether the respondents/promoters cheated the complainants by not depositing EDC/IDC?

#### 11. Relief Sought

- i. To direct the respondents to refund a sum of Rs. 82,22,590/- along with interest @ 18% per annum from the date when payments were made till realization of the amount in full.



## REPLY

### Preliminary Objection:

12. The respondent no.2 i.e. M/s Empire Realtech Pvt. Ltd. submitted that (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 DGTCP, Chandigarh for setting up of a residential group housing Colony named "106 Golf Avenue". Respondent no.2 had entered into a collaboration agreement with respondent no.1 and in terms thereof, respondent no.1, inter-alia fully entitled authorized and competent to carry out development and construction on the said land and to sell the said flat and to execute agreement thereto.
13. The parties had executed an apartment buyer's agreement on 13.12.2012. In terms of the apartment buyer's agreement, the complainants agreed to purchase the apartment bearing no. T-03- 12/03 in tower no. 03 of the residential group housing colony named "106 Golf Avenue in Sector-106, Gurugram Haryana for a total consideration amount of Rs. 91,08,368/- excluding other applicable taxes and charges.





14. The respondents submitted that the construction is almost complete and mostly only the interior and finishing work is required to be completed and the respondent submits that the same in progress.
15. The respondents submitted that after the execution of ABA, 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 respondent that "vide order dated 01.04.2015 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 of all construction sites and in pursuance/compliance thereto, the respondent had to stop all the construction activities between the period from 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. The office of the District Town Planner Enforcement on 10.11.2017 had again directed to stop all construction activities. The construction activities slowed due to reasons aforementioned.



16. 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 and it is clearly evident from the photographs which is annexed by the respondents in their reply.

### Reply on Merit

17. The respondents submitted that they have 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 of 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 writ Petition is pending adjudication before the Hon'ble Punjab and Haryana High Court at Chandigarh.

18. The respondents stated that they have incurred total expenditure of Rs. 4,57,40,20,554/- as on 30.06.2018 towards said project which includes but not limited to payment of EDC/IDC and payment of contractor cost etc.

### 19. Determination of issues

- i. Regarding the **first issue** raised by the complainants, the complainants have not laid before the hon'ble authority any supported documentary or other evidence to





support their assertion that their consent was induced by misrepresentation. Accordingly, they not discharged their burden of proof and no finding can be made for the complainant on this issue.

- ii. Regarding the **second issue** raised by the complainants, from the perusal of the facts of the present matter, as per clause 13 of the said agreement, the respondents had to deliver the possession of the said unit to the complainants by 13.12.2016 and has failed to do so. However, As per clause 13 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 13.12.2016. The clause regarding possession of the said unit is reproduced below:

**“ 13 POSSESSION OF FLOOR**

*The company shall endeavour to complete the construction of the said apartment within 42 months from the date of execution of this agreement and the company shall be entitled to 6 months additional period....”*

Accordingly, the due date of possession was 13.12.2016. As far as the penalty clause in case of delay in possession is concerned which is Rs. 10/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in



***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.”*

- iii. Regarding the **third issue**, the promoter was under a legal obligation for handing over the possession as per the ABA. However, they committed a default in doing the same and thus, they are liable to pay for the delayed interest under proviso to section 18(1) to the complainants, at the prescribed rate of 10.45%, as prescribed by rule 15 of HRERA rules for every month of delay till the handing over of possession. The complainant has sought refund of the amount paid by them along with interest @18% p.a. and intend to withdraw from the project. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall



hamper the completion of the project. The refund of deposited amount will also have adverse effect on the interest of the other allottees who wish to continue with the project. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.

- iv. Regarding the **fourth issue**, it is subject to the decision of the Hon'ble Punjab and Haryana HC in C.W.P No. 15096 of 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 writ Petition is pending adjudication before the Hon'ble Punjab and Haryana High Court at Chandigarh.



20. As the possession of the flat was to be delivered by 13.12.2016 as per the clause referred above, the authority is of the view that the promoters have violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

**“11.4 The promoter shall—**

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*

21. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

**“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.”*

It has been requested that necessary directions be issued to the promoters 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.*

22. As per obligations on the promoter under section 18(1) proviso, in case the allottee wishes to withdraw from the project, the promoter is obligated to refund the amount paid by the complainant along with interest at the prescribed rate as the promoter has not fulfilled his obligation. Section 18(1) is reproduced below:

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.



### FINDINGS AND DIRECTIONS OF THE AUTHORITY

23. 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.
24. The complainants have sought refund of the amount paid by them along with interest @18% p.a. and intend to withdraw from the project. However, keeping in view as per statement of the counsel for the respondent that the builder has filed an affidavit w.r.t to delivery of possession i.e. October 2019. The present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the other allottees. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.
25. The authority has decided to take suo-motu cognizance against the said promoter for not getting the project registered





and for that separate proceeding will be initiated against the respondent u/s 59 of the Act.

26. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondent:

- i. The respondents are directed to give the physical possession of the said flat to the complainants on the date committed by the respondents that they have filed an affidavit w.r.t to delivery of possession i.e. **October 2019**.
- ii. The respondents are duty bound to pay the interest at the prescribed rate i.e. 10.45% on the amount paid by the complainants i.e. Rs. 82,22,590.86/- for every month of delay from the due date of possession i.e. 13.12.2016 till the committed date of possession. The arrears of interest accrued so far shall be made to the complainants 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.



The respondent is directed to submit the required documents for registration of the project within a week failing which penalty proceedings shall be initiated against the respondent under section 59 of the Act *ibid*.

27. The order is pronounced.
28. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 16.10.2018

HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 16.10.2018
Complaint No.	305/2018 Case titled as Mr. Vijay Rekhi & Anr. V/s CHD Developers Ltd. & Anr
Complainant	Mr. Vijay Rekhi & Anr.
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	19.09.2018
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 statement of the counsel for the respondent that the builder has filed an affidavit w.r.t to delivery of possession i.e. **October 2019**. Counsel for the complainant has stated that their flat is situated in **Tower No.3** and the tentative date of possession is **October 2019** as per the affidavit submitted by the counsel for the respondent. Project has already been delayed for more than 2 years 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 the possession on the committed date i.e. October 2019, in that case, the complainant can seek refund alongwith prescribed rate of interest w.e.f. 13.12.2016 till the committed date of possession. The arrears of interest accrued so far shall be paid to the complainant 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 against the respondent 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