

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 16.10.2018
Complaint No.	306/2018 Case titled as Mr. Manjit Singh Sudan V/s M/s CHD Developers Ltd.& Anr.
Complainant	Mr. Manjit Singh Sudan
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 counsel for both the parties heard. As per the statement of the counsel for the respondent that they have 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 as per the affidavit submitted by the counsel for the respondent is **October 2019**. The project has already been delayed for more than 1 year and 9 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 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. 1.1.2017 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 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

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

**Complaint No. : 306 of 2018**  
**First date of hearing: 18.07.2018**  
**Date of Decision : 16.10.2018**

Mr. Manjit Singh Sudan  
R/o 69-B, D.D.A Flats, Qutab Enclave ...**Complainant**  
Phase-2, New Delhi- 110016

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 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 complainant  
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 complainant Mr. Manjit Singh Sudan , 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 12.12.2012 for unit no. T03-08/02, tower no. T03 having area of approx 1657 sq ft 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	Unregistered
3.	Unit no.	T03-08/02
4.	Total cost	Rs. 92,30,659.50/-(as per annexure-3)
5.	Total amount paid by the complainant	Rs. 81,41,933.82/-
6.	Nature of real estate project	Group housing colony
7.	Payment plan	Construct on linked plan
8.	Date of apartment buyer's agreement	12.12.2012
9.	Date of delivery of possession.	Clause 13 within 42 months from the date of execution of this Agreement + 6 months



		grace period i.e 12.12.2016
10.	Delay of number of months/ years as of 16.10.2018	1 year 10 months
11.	Penalty Clause as per builder buyer agreement dated	Clause 13- Rs. 10/- per sq ft. per month

3. The details provided above, have been checked on record available in the case file which have been provided by the complainants and respondents . An apartment buyer agreement is available on record for unit no. T03-08/02 according to which the possession of the aforesaid unit was to be delivered by 12.12.2016. The promoter has failed to deliver the possession of the said unit to the complainant by the due date as per builder buyer agreement dated 12.12.2012. Therefore, the promoter has not fulfilled his committed liability as on date.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 18.07.2018. Accordingly, the respondent appeared on 18.07.2018, 04.09.2018, 19.09.2018 and 16.10.2018 The reply has been filed on behalf of the

respondent on dated 13.08.2018. A rejoinder was filed by the complainant wherein he denied the submissions of the respondent and re asserted the fact stated in the complaint.

### FACTS OF COMPLAINT

5. The complainant booked a residential flat in the project of the respondent namely "106 Golf Avenue" at Sector 106, Gurugram in Daultabad Village, Gurugram, Haryana.
6. The complainant submitted that 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 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.

7. The complainant as such was induced by the representatives of the respondents/promoters to make huge payment towards the sale consideration even before the execution of the apartment buyer agreement.
8. The respondents after receiving a substantial sum of money from the complainant finally executed a pre-printed apartment buyer agreement dated 12.12.2012.
9. The said apartment buyer agreement is totally one sided which impose completely biased terms and conditions upon the complainants thereby tilting the balance of power in favour of the respondents.
10. The structure, which has been constructed, 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 buyers of other projects on which the respondent no.1 relied at the time of including the complainant to book the apartment in the



present project have also complained about the sub-standard products of the respondent. The said benchmark project "Avenue 71" is facing multiple litigation on account of low quality work and other serious issues.

11. 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 respondent with the government. Thus, the intention of the respondent was dishonest since the beginning towards the homebuyers as well as the government.
12. 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.
13. 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 has lost faith in respondents who have taken the complainant and other home buyers for a ride by not completing the project

### ISSUES TO BE DECIDED

- 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 is are able 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 EDC/IEC with the government?



- v. Whether the respondents have wrongfully demanded parking charges?

### RELIEF SOUGHT

- i. Direct the respondents to refund a sum of Rs. 81,41,933.82/- along with interest @ 18 % per annum from the date when payments were made till realization of the amount in full.

### Respondent's reply

#### Preliminary Objection:

14. It is stated that there is no merit whatsoever in the complaint filed and the same is liable to be dismissed with costs. Save as otherwise specifically admitted in the present reply, it is stated that the contents of the complaint are wrong and are denied.
15. The respondent no.2 i.e. M/S. Empire Realtech Pvt. Ltd. (wholly owned subsidiary or 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.

16. There has been an inordinate delay by the respondents in completing the project and therefore the complainant is not entitled for refund of money along with interest. In actual fact, 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 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 loss to the Respondent. If, there had been an increase in the prices of properties, which was the trend at the time of execution of the



apartment buyer's agreement, the complainant would have never sought return of money.

17. The original allottee had executed an apartment buyer's agreement on 12.12.2012 which was endorsed in favour of complainant on 19.10.2016. In terms of the apartment buyer's agreement, the complainant had agreed to purchase the apartment bearing no. T03-08/02 in tower no.3 of the residential group housing colony named "106 Golf Avenue" in Sector-106, Gurugram, Haryana for a total consideration amount of Rs.89,04,072/- excluding other applicable taxes and charges.
18. It was agreed in terms of clause 13 of the apartment buyer's agreement that the possession of the apartment would be given to the complainant within a period of 42 months from the date of the execution of the apartment buyer's agreement and that the respondents would be entitled to an additional period of 06 months as grace period'.
19. The respondents respectfully submitted that 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.

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 12.06.2016. The additional period of 06 months expired on 12.12.2016. 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 "Vardhman 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 have 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.

21. 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. It is humbly and respectfully submitted that in group housing projects, a certain amount of delay can occur due to various reasons including departmental compliances/approval from time to time.



## 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:

- i. 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 the application have been submitted.
- ii. In respect of **second issue** raised by the complainant, the due date of possession of the project in question was 12.12.2016 and the respondents delayed in handing over the possession. Thus the respondents are held liable for unjustifiable delay in construction and development of the project in question
- iii. 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.3 will be completed by October 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.

- iv. 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 respondents to immediately deposit the amount of EDC/IDC already collected by him from the allottees.



- v. 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 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 alongwith other common uses, in the declaration to be filed under Apartment Ownership Act, 1983.”*

- vi. 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.



vii. 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

### Findings of the authority

1. 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.
2. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the apartment T03-08/02 to the complainant by the committed date i.e. 12<sup>th</sup> Dec,2016 as per the said agreement and the possession has been delayed by 1 year 10 months till the date of decision i.e. 16.10.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession. Further,



the respondent has submitted during the oral arguments that the construction of the project is almost complete and they shall offer the possession of the unit to the complainant by October 2019.

**Decision and directions of the authority**

3. 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 respondent is duty bound to hand over the possession of the said unit by October 2019 as committed by the respondent.
- (ii) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 12.12.2016 till the actual date of handing over of the possession.
- (iii) The respondent is directed to pay interest accrued from 12.12.2016 to 16.10.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of



- (v) to 16.10.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10<sup>th</sup> of every succeeding month.
- (vi) The respondent is further directed to apply for registration of the project within fifteen days from 16.10.2018 otherwise penal consequences will follow.
4. 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.
5. The order is pronounced.
6. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 16.10.2018