BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. : 396 of 2018
Date of First Hearing : 02.08.2018
Date of Decision : 13.09.2018

1. Mr. Amit Sinha and Mrs Rita Sinha
R/o Flat no. 10-A, GH-4, Gurugram One, Sector-22,Old Delhi, Gurugram Road, Gurgaon-122015

...Complainants

Versus

1. M/s CHD Developers Ltd. (R1)
2. M/s Empire Realtech Pvt. Ltd. (R2)
Office at: SF-16-17, First Floor, Madam Bhikaji Cama Bhawan, Bhikaji Cama Place, New Delhi-110066

...Respondents

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

APPEARANCE:
Shri Vaibhav Suri — Advocate for the complainants
Shri Anup Gupta — Advocate for the respondents

ORDER

1. A complaint dated 07.06.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Amit

Sinha and Mrs. Rita Sinha, 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 26.06.2013 for unit no. T02-09/03 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, Daultabad village, Gurugram
2.	Unit no.	T-02-09/03
3.	Project area	12.344 Acres
4.	Registered/ not registered	Not registered
5.	DTCP license	69 of 2012
6.	Date of apartment buyer agreement	26.06.2013
7.	Total consideration	Rs. 81,71,388/-
8.	Total amount paid by the complainant	Rs. 74,94,096/-
9.	Payment plan	Construction linked
10.	Date of delivery of possession	Clause 13 – 42 months from date of agreement + 6 months grace period i.e. 26.06.2017
11.	Delay of number of months/ years upto 13.09.2018	1 year 2 months and 23 days
12.	Penalty clause as per apartment buyer agreement dated 01.04.2013	Clause 13- Rs. 10/- per sq. ft. per month

HARYANA REAL ESTATE REGULATORY AUTHORITY
Chairman
Member
Member

3. As per the details provided above, which have been checked as per record of the case file, an apartment buyer agreement is available on record for unit no. T-02-09/03 according to which the possession of the aforesaid unit was to be delivered by 26.06.2017. The promoters have failed to deliver the possession of the said unit to the complainants. Therefore, the promoters have not fulfilled their 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 02.08.2018 and 13.09.2018. The case came up for hearing on 02.08.2018.

Facts of the complaint

5. The complainants booked a unit in the project named "106 Golf Avenue" in Sector 106, Daultabad village, Gurugram by paying an advance amount of Rs 8,00,000 /- to the respondents. Accordingly, the complainants were allotted a unit bearing no. T-02-09/03, having saleable area of 1511 sq. ft.

6. On 26.06.2013, an apartment buyer agreement was entered between the parties wherein as per clause 13, the construction should have been completed within 42 months from date of agreement + 6 months grace period i.e. 26.06.2017. However, till date the possession of the said unit has not been handed

over to the complainants despite making all requisite payments as per the demands raised by the respondents. The complainants made payment of all instalments demanded by the respondents amounting to a total of Rs 74,94,096/-.

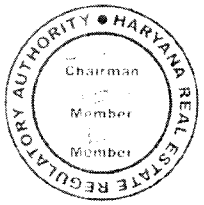
7. The complainants submitted that the representatives of the respondent no.1 at the time of booking represented to the complainants that respondent no.1 is developing the above project and is the absolute owner of land where the proposed project is supposed to be developed. However, at the time of execution of the buyer's agreement, the complainants 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 complainants were 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.

8. It is submitted that the complainants were induced by the representatives of the respondents/promoter to make huge payment towards the sale consideration even before the execution of the agreement. The respondents after receiving a substantial sum of money from the complainants finally executed a pre-printed apartment buyer agreement dated 26.06.2013.

9. The complainants submitted that the said apartment buyer agreement is totally one sided which imposes completely biased terms and conditions upon the compla nants thereby tilting the balance of power in favour of the respondents.

10. The complainants further 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. It may be relevant to mention that the other buyers of the projects including the complainants have also complained about the sub-standard products of the responden s. The said benchmark project Avenue 71 is facing multiple litigations on account of low quality work and other serious issues.

11. It is further 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 the beginning towards the homebuyers as well as the government. The respondents also took 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.



12. 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 complainants have lost faith in respondents who have taken the complainants and other buyers for a ride by not completing the project.

13. The complainants 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 complainants. Complainants further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainants decided to terminate the agreement.

14. As per clause 13 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 26.06.2017. The clause regarding possession of the said unit is reproduced below:

> *"13- ..... 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.....however, in case of delay beyond the period of 6 months and such delay is attributable to the company, the company shall be liable to pay compensation @ Rs. 10 per sq. ft. per month of the super area of the apartment for the period of further delay..."*

HARYANA REAL ESTATE REGULATORY AUTHORITY
Chairman
Member
Member

15. **Issues raised by the complainants**

I. Whether the respondents/promoters made false representations about the project in question in order to induce the complainants to make a booking?

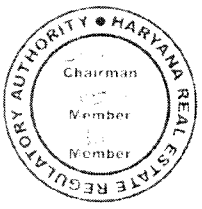
II. Whether the respondents/promoters are liable for unjustifiable delay in construction and development of the project in question?

III. Whether the respondents/promoters are liable to refund the amount deposited by the complainants along with interest @ 18% p.a.?

IV. Whether the respondents/promoters cheated the complainants by not depositing EDC/ DC with the government?

V. Whether the respondents have wrongfully demanded parking charges?

16. **Relief sought**



I. Direct the respondents to refund a sum of Rs.74,94,096/- along with interest @ 18 % per annum from the date when payments were made till realization of the amount in full.

Respondent's reply

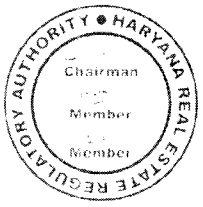
17. The respondents stated that the present complaint is not maintainable in law or facts. The complainants have misdirected himself in filing the above captioned complaint

before this authority as the reliefs being claimed by the complainants cannot be said to even fall within the realm of jurisdiction of this authority.

18. The respondents submitted that 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 complainants who were 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, are seeking to pass their loss to the respondents.

19. It is further provided that the time period for delivery of possession was "tentative" and was subject to force majeure events, court indulgence, as provided in the apartment buyer's agreement.

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 26.12.2016. The additional period of 06 months expired on 26.06.2017, after the execution of the apartment buyer's agreement.



21. Respondents further submitted that the construction has slowed down for the reasons stated above and because of a severe slump in the real estate market. The complainants are not entitled to seek 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. Respondents submitted that the construction of the project/apartment is in full swing and in progress despite aforementioned hurdles and that there is no delay and in case of any delay, the complainants are entitled to a reasonable compensation which is already provided in the apartment buyer agreement and the final adjustment could be carried out at the time of delivery of possession and execution of conveyance deed and final payments.

23. 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.

24. It is denied that the agreement is totally one sided which impose completely biased terms and conditions upon the complainants. The complainants have optec construction

linked Plan and in terms space applied for housing loan to the ICICI Bank, for the balance payment of the said apartment.

25. It is denied that the respondents have not deposited EDC/IDC with the government. It is stated that the respondents has 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.

26. **Issues raised by respondents**

I. Whether the complainants are misleading this Hon'ble authority by filling false and frivolous complaint against the respondent?

II. Whether the complainants have furnished all true and relevant facts for adjudicating instant complaint?

III. Whether the complainants is a mere investor and made investment for profit in the said project?

IV. Whether the complainants are bound by the apartment buyer's agreement executed between the complainants and the respondent?

V. Whether the relief claimed by the complainants falls within the realm of the jurisdiction of this authority?

VI. Whether the respondents are entitled to hand over the possession of the said apartment in terms of the agreement unless there is a delay due to "force majeure', court orders, government policy, guidelines, decisions affecting the regular development of the said project?

Issues decided

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

27. In respect of the first issue raised by the complainants, the authority is of the view that the complainants have failed to prove that the promoters made false representations about the project.

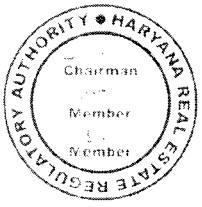
28. In respect of second issue raised by the complainants, the due date of possession of the project in question was 26.06.2017 and the respondents delayed in handing over the possession.

29. In respect of third issue raised by the complainants, the respondent submitted that the construction of the tower in question is almost complete and only the interior and finishing work is required to be completed further and The respondent further submitted that the same is in progress and the counsel for respondent made a statement that the said tower will be completed by April 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 complainants are paid interest for every month of delay till the time of handing over the possession. The counsel for complainants 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.

30. In respect of fourth issue raised by the complainants, from the statement of the counsel for respondent, it seems that EDC/IDC has been collected from allottees but the same has not been paid to the government, although the promoter is waiting for some amnesty schemes for payment of pending EDC/IDC; so the authority directs DTCP to look into this matter.

31. In regard to fifth issue raised by the complainants, 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 complainants 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.

32. For sufficient information on the part of counsel of complainants or respondents, the issue cannot be decided. This issue regarding wrongful charging of parking charges be referred to Director, T & CP for clarity and to issue directions to the respondents.

33. In regard to first issue raised by the respondents, the counsel for the respondents failed to prove that the complainants are misleading this authority.

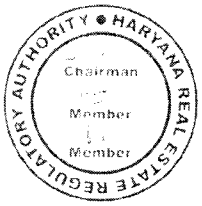
34. In regard to second issue raised by the respondents, the complainant has furnished true and relevant facts.

35. In regard to the third issue raised by the respondents, the authority is of the view that it does not make a difference whether the complainants are an investor or otherwise. The complainants are an allottee as per section 2(d) and has every right to approach this authority for redressal of grievances and to file complaint.

36. In regard to fourth issue raised by the respondents, the RERA Act 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 complainants had no say in the pre-printed agreement and the promoter being in the dominant position. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017),*** wherein the Bombay HC bench held that:

> *" ...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

37. In regard to fifth issue raised by the respondents, the relief claimed by the complainants falls within the realms of jurisdiction of this authority except the compensation demanded by the complainants. If the complainants are interested in compensation proceedings, they can directly approach the adjudicating officer in this regard.



38. The complainants make a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned 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."

39. The complainants 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**-*

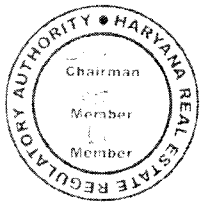
The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

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

Findings of the authority

40. **Jurisdiction of the authority-** The preliminary objections raised by the respondent 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.

41. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that the respondents have committed a revised time up till April, 2019 for handing over the possession to the allottees. The relief sought in point 'I' by the complainants cannot be allowed in this shape as has been demanded but has been modified keeping in view the interest of other allottees and in interest of the completion of the project in question. However, the respondent is bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainants for every month of delay on the 10th of every succeeding month from the due date of possession, i.e. 26.06.2017 till the handing over the possession of the unit in April 2019. The respondents are also directed to pay the amount of interest at the prescribed rate from 26.06.2017 to 13.09.2018 on the deposited amount within 90 days from the day of this order. The complainants must wait till 30th April, 2019 for the respondents to fulfil its commitment and deliver the possession and in case of any default in the handing over of possession, the complainants shall be at liberty to demand refund of money with the prescribed interest. Further, the complainants must also complete the payment due on their part.



Decision and directions of the authority

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

(i) The respondents are directed to give the physical possession of the said flat to the complainants on the date committed by the respondents for handing over the possession, by 30.04.2019.

(ii) The respondents are directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from 26.06.2017 to 13.09.2018 on the deposited amount within 90 days from the day of this order and thereafter, on the 10th of every succeeding month.

(iii) If the possession is not given on the date committed by the respondents , i.e. 30.04.2019 then the complainants 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 and deposit of EDC/IDC by the respondents be referred to Director, T & CP for clarity and to issue directions to the respondents.

HARYANA REAL ESTATE REGULATORY AUTHORITY
Chairman
Member
Member

43. The complaint is disposed of accordingly.

44. The order is pronounced.

45. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch to initiate penal proceedings as the project has not been registered.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.09.2018

PROCEEDINGS OF THE DAY	
Day and Date	Thursday and 13.09.2018
Complaint No.	396/2018 Case titled as Mr. Amit Sinha & Anr. V/s M/s CHD Developers Ltd & Other.
Complainant	Mr. Amit Sinha & Anr.
Represented through	Shri Vaibhav Suri, Advocate for the complainant.
Respondent	M/s CHD Developers Ltd & Other.
Respondent Represented through	Shri Anup Gupta, Advocate for the respondent.
Last date of hearing	2.8.2018
Proceeding Recorded By	

Proceedings

The project is not registered.

Counsel for the complainant has filed Rejoinder.

Counsel for the respondent has filed an affidavit regarding status of the project.

Arguments advanced by the counsels for the parties heard at length.

It has transpired during the course of arguments that the complainant's counsel has raised mainly two issues:

(i) Delay in delivery of possession

(ii) Plea taken by the respondent on account of delay is neither tenable nor valid as they have violated the terms and conditions of Ministry of Environment guidelines as a result of which work has to be stopped.

It has been alleged by the complainant's counsel that the respondent company is not fulfilling their liability for timely depositing EMI and the complainant has badly been effected, the court may direct the builder company for timely delivery of possession i.e. by April 2019 after obtaining required occupation certificate from the competent authority and fulfilling their liability under the subvention scheme for depositing timely EMI. All other provisions of RERA Act under section 18 of the Act will be applicable i.e. giving delay charges on prescribed rate of interest till the offer of the possession and the compensation part before the Adjudicating Officer.

It has also been alleged by the complainant that respondent have taken money for providing parking facility, thereby not treating the parking space as part of common facilities in blatant violation of the dicta of the Hon'ble Supreme Court. In reply to this, counsel for the respondent submits that the respondent is providing covered car parking and they are well within their right to charge car parking.

The "Project 106 Golf Avenue" Sector 106, Gurugram has not been got registered by the respondent. A copy of this order be endorsed to the registration branch for initiating penal proceedings.

Issues :

(i) the complainant failed to prove that the promoter made false representation about the project;

(ii) whether the due date of possession was 26.6.2017 and there is delay in handing over the possession of the unit;

(iii) whether the project in which unit of the complainant falls 90% of the work is complete in respect of structure.

The counsel for the respondent made a statement that possession of the unit will be ready by April 2019 and the same will be handed over to the complainant by April 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 refund, it will be better if the complainant is paid prescribed rate of interest for every month of delay till handing over the possession.

The complainant shall be at liberty to demand refund of money alongwith prescribed rate of interest if possession is not handed over to him by 30.4.2019. Counsel for the complainant stated that in case the authority is not inclined to allow refund at this stage, he has no objection for payment of interest by the respondent at the prescribed rate of interest for every month of delay

(i) from the statement of counsel for the complainant it seems that EDC & IDC had been collected from the allottees but the same has not been deposited fully with the government for which authority decides to refer the matter to DTCP for taking appropriate action, although the promoter is waiting for some amnesty scheme for payment of pending EDC/IDC

(ii) the attention of the authority was drawn regarding approval of building plans of the said society vide memo dated 17.9.2012 by Director Town and Country Panning wherein condition No.13 provided as under:

> **Condition no.13:** The basement shall be used for parking and services as prescribed in the approved 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 owners/residents 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.

From this condition it is very clear that basement is part of the common area and common areas are not meant for exclusive use of flat owners/residents of group housing scheme. Accordingly, this issue is decided in affirmative subject to the condition that respondent may seek approval from the Director Town and Country Planning specifically.

The issue regarding wrongful charging of car parking, the matter may be referred to the DTCP for clarity and issuing directions to the

respondent. Counsel for the respondent raised issue that conditions of BBA are against the conditions of approval particularly regarding car parking charges.

Counsel for the respondent failed to prove that complainant is misleading this authority.

The main issue raised by the counsel for the respondent is regarding furnishing of information relevant to the facts to the extent possible.

It does not make a difference whether the complainant is an investor or otherwise the complainant is an allottee as per definition given in section 2 (b) and has every right to approach this authority for grievance redressal.

Whether the complainant is bound with the provisions of RERA-Yes but certain clauses of BBA which are one sided and the complainant having no say keeping in view the preprinted agreement and the promoter being in the dominant position.

(iv) Yes, relief being claimed by the complainant regarding payment of compensation, the authority has the jurisdiction except the compensation demanded by the complainant. If complainant is also interested in compensation proceedings, he may approach before the Adjudicating Officer.

The relief sought in para No.1 has not been allowed but has been modified keeping in view the interest of other allottees and in the interest of completion of project for which counsel for the complainant

has agreed alternatively if the authority is not inclined to accede to the relief sought for, the allottee is entitled interest at the rate of 10.45% for every month of delay till handing over the possession.

Issue No.2 does not fall within the jurisdiction of this authority.

Accordingly, the complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
13.09.2018