



**HARERA**  
**GURUGRAM**

; HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह. सिविल लाईंस गुरुग्राम हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No. : 218/2018**

**Date of Decision : 18.02.2021**

**Abhineet Agarwal & Ms Monika Agarwal  
Flat No.26/10, GF, Ashok Nagar, New Delhi-110018**

**Complainants**

**V/s**

- 1. M/s CHD Developers Ltd.**
- 2. Shri R K Mittal**
- 3. Shri Gaurav Mittal**
- 4. Ms Shailly Goel**
- 5. Shri Pran Nath, Directors CHD Developers Ltd.  
SF-16-17, First Floor, 11, Bhikaji Cama  
Bhawan, Bhikaji Cama Place, New Delhi-110066**

- 6. M/s Urban Plus Infrabuild Pvt Ltd.  
381,SCO Building, Sector 29, Gurugram**

**Respondents**

**Complaint under Section 31  
of the Real Estate(Regulation  
and Development) Act, 2016**

**Argued by:**

**For Complainants:**

**Ms. Shivali, Advocate**

**For Respondents No. 1 to 5**

**Shri Ravi Aggarwal, Advocate**

**For Respondent No.6**

**Shri Vinod Kumar, Advocate**

**ORDER**

This is a complaint under Section 31 of the Real Estate(Regulation and  
Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule

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18/2/2021

29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Shri Abhineet Agarwal and Monika Agarwal seeking refund of Rs.72,42,935/- deposited with the respondents for booking an apartment bearing No.CVN-T-07-00/005, measuring 1257 sq. ft. in its project known as ' CHD VANN', situated in Sector 71, Gurugram for a sum of Rs. 1,04,59,936.50p.besides taxes etc on account of violation of obligations of the respondents/promoters under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

<b>Project related details</b>		
I.	Name of the project	"CHD VANN" Sector 71, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	T-07-00/005
V.	Tower No. / Block No.	M
VI.	Size of the unit (super area)	Measuring 1257 sq ft
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	12.10.2013
XI.	Date of Allotment(original)	

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18/2/2021

XII	Date of execution of ABA (copy of ABA be enclosed as annexure-B)	21.10.2014
XIII	Due date of possession as per ABA	21.10.2018
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 12 of Buyer Developer Agreement @ Rs.10/- per sq feet per month.
<b>Payment details</b>		
XVI	Total sale consideration	Rs. 1,04,59,936.50p.
XVII	Total amount paid by the complainants	Rs. Rs.72,42,935

Brief facts of the case can be detailed as under.

A project by the name of CHD VANN' situated in Sector 71, Gurugram was to be developed by the respondent No.1 to 5. The complainants coming to know about the same through respondent No.6 approached them for allotment of a unit and which led to allotment of the same vide letter of allotment Annexure P/4 dated 03.05.2014. A sum of Rs. 8,00,000/- was deposited by the claimants towards the allotment of that unit. A Builder Buyer Agreement was executed between the parties on 21.10.2014 Annexure P/11 and which led the complainants towards deposit of various payments of the allotted unit. So, in this way, they deposited a total sum of Rs.72,42,935/- with respondent No.1 to 5. The allotment of the apartment was made under the construction linked plan. It is the case of the complainants that possession of the allotted unit was to be offered to them within a period of 42 months but the respondents/builder failed to complete the construction and offer possession of the allotted unit to them.

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18/2/2021

The complainants also took a loan of Rs.55,00,000/- and deposited with the respondent with the hope that construction would be completed in time and they would be offered possession of the allotted unit. It was agreed upon by the respondents that pre-EMIs and interest on the loan amount would be paid by them. But despite paying a huge amount neither the respondents completed the project nor offered possession of the allotted unit to the complainants. In fact, that project was abandoned. So, the same compelled the complainants to withdraw from the project and seeking refund of the amount deposited with the respondents by filing a complaint in December, 2019. So, on these broad averments, they filed a complaint seeking refund of Rs.72,42,935/-besides interest and compensation from respondents No. 1 to 5 as prayed above.

2. The respondent No.6 did not choose to file any written-reply to the complaint.

3. But the case of the respondents No. 1 to 5 while filing reply is otherwise and wherein it was pleaded that though the complainants were allotted a unit in question on their request in the year 2014 and they deposited various amount towards it, but it was denied that the project CHD VANN has been abandoned. In fact, the construction of the same is in full swing and progressing well despite severe slump in the real estate market and decline in prices of properties. It was denied that the respondents ever threatened the complainants with cancellation of the allotted unit. It was pleaded that the registration of the project with the Authority is valid upto 28.07.2021 and by that time, the same would be completed and possession of the allotted unit would be offered to the complainants. Though the allotment of the unit in question was made under the construction linked plan to the complainants but it was denied that they had been making payments regularly. In fact, a number of reminders were issued to them but

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18/2/2021

they did not pay the remaining amount by the due date. Lastly, it was pleaded that due to force majeure factors, the construction of the project could not be carried out. In addition to this, National Green Tribunal also imposed restrictions on construction activities at the spot; labour and various other factors etc also contributed towards slow down in the construction. It was denied that claimants are entitled to seek refund of the amount deposited with answering respondents.

4. After hearing both the parties and perusing the case file, the learned Authority vide its orders dated 27.11.2018 directed the respondents to pay delayed possession charges and hand over the possession of the allotted unit to the complainants by due date i.e. 28.07.2021. Feeling aggrieved with the same, they filed an appeal before the Haryana Real Estate Appellate Tribunal, Chandigarh and who vide orders dated 28.08.2019 set-aside that order and directed this forum to proceed further with the complaint in accordance with law.

5. After the receipt of that order, both the parties filed amended pleadings and reiterated their earlier version.

6. I have heard the learned counsel for both the parties and have also perused the case file.

7. Some of the admitted facts of the case are that the complainants were allotted an apartment bearing No. VANN T-07-00/005, measuring 1257 sq. ft. in T-07 of the project CHD VANN situated in Sector 71, Gurugram by the respondents for a sum of Rs.1,04,59,936/- on 17.04.2014 which led to execution of Builder Buyer Agreement between the parties on 21.10.2014 as P/11. As per that document, the complainants started depositing various amounts towards allotment of the unit and paid a total sum of Rs.72,42,935/- including a loan amount of Rs.55,00,000/- upto mid of 2016.

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A perusal of BBA P/11 in clause 12 shows the due date of possession to be 42 months from its execution i.e. 21.10.2014. So, in this way, the respondents were required to offer possession of the allotted unit to the complainants by 07.11.2017. The allotment of the allotted unit was made to the complainants under the construction linked plan and upto mid of 2016, they had already deposited a sum of Rs.72,42,935/- i.e. more than 72% of the total consideration of Rs. 1,04,59,936.50p. There is nothing on record to show that upto mid 2016, the respondents had completed more than 72% of the construction of the project in which the complainants were allotted a unit. Neither any status report with regard to construction at the spot has been placed on file nor there is any document to prove the progress of construction of the allotted unit. The only plea taken on behalf of the respondent is that the project was registered with the Authority and the due date for completion of the project has been given as 28.07.2021. But whether the registration of the project with the Hon'ble Authority extend the due date of the project. The answer is in the negative as is evident from the various pronouncements by the Hon'ble Apex Court of the land. In case **Neelkamal Realtors Suburban Pvt Ltd. & Anr Vs Union of India and Ors, 2018(1)(Civil) 298(DB)**, a Division Bench of Hon'ble Bombay High Court and later on followed by the Hon'ble Appellate Tribunal, HRERA, Chandigarh in case **M/s Magic Eye Developers Pvt Ltd. Vs Ishwar Singh Dahiya, in Appeal No. 173/2019 decided on 17.12.2019**, <sup>it was</sup> observed that a declaration given by the promoter under section 4(2) (1)(c) of the Act has categorically laid down that the provisions of the Act will not be re-write the clause of completion or handing over of the possession mentioned in the agreement for sale. So, the plea advanced with regard to extension in handing over the possession of the allotted unit to the complainants is untenable. Secondly, it is the specific version of the complainants that the

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18/2/2021

project has been abandoned and there is nothing to show that its construction is going on at the spot and is likely to be completed soon. Though this plea is rebutted by the respondents but again for the sake of repetition, no document is on record to show the status and extent of construction of the project at the spot and the period of its likely completion. If the project has not been abandoned by the respondents as claimed, then <sup>the</sup> best course was to file status report with regard to the extent of construction at the spot alongwith photographs. But that was not done. So, in such a situation, an adverse inference is to be drawn against them and the plea advanced in this regard is devoid of merit.

8. Faced this situation, it is contended on behalf of the respondents that BBA P/11 was executed between the parties and as per clause 12, the claimants at the most can claim compensation/penalty @ Rs.10/- per sq ft per month. But again the plea advanced in this regard is devoid of merit. In case of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725**, it was held by the Hon'ble Apex court of the land that when the respondent/builder fails to complete the project in time and deliver possession of the allotted unit, the respondent cannot seek to bind the allottees with one sided contractual obligation nor can ask them to wait indefinitely after the due date has expired. The possession of the allotted unit was to be handed over to the complainants by 02.11.2017 and the complaint to seek the refund of the deposited amount was filed by the complainants in December, 2019 i.e. after a period of more than two years. So, the complainants cannot be asked to wait for completion of the project indefinitely and they have a right to ask for refund particularly when it is proved that possession is inordinarily delayed. A similar view was taken by the Apex court of the land in case of **Ireo Grace Real Tech Pvt Ltd. Vs**

**Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on

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11.01.2021. So, the plea of the respondents that the complainants are not entitled for refund of the deposited amount is untenable.

9. Thus, in view my discussion above and taking into consideration all the material facts brought on the record by both the parties, it is held that the claimants are entitled for refund of the amount deposited with the respondent besides interest. Consequently, the following directions are hereby ordered to be issued to the respondents,

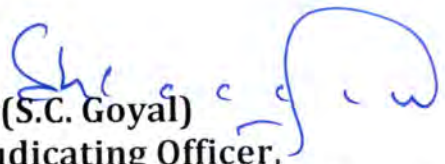
- i) To refund the entire amount of Rs.72,42,935/- besides interest @ 9.3.% p.a. from the date of receipt of each payment till payment of whole amount is paid to the complainants.
- ii) The respondents are also liable to pay a sum of Rs.1,00,000/- as compensation inclusive of litigation charges to the claimants.

10. This order be complied with by the respondents within a period of 90 days and failing which legal consequences would follow.

11. Hence, in view of my discussion detailed above, the complaint filed by the complainants against the respondents is ordered to be disposed off accordingly.

12. File be consigned to the Registry.

18.02.2021

  
(S.C. Goyal)  
Adjudicating Officer,  
Haryana Real Estate Regulatory Authority  
Gurugram 18/2/2021