

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 3675 of 2019
Date of decision : 24.08.2021

SANJIV CHATRATH AND URMILA CHATRATH
R/O : F-601, Ivy Apartments,
A- Block, Sushant Lok-I,
Sector-28, Gurugram

Complainants

Versus

M/S CHD DEVELOPERS LIMITED.
ADDRESS: 201, Radha Chambers,
Plot No. 19-20, G Block,
Community Centre, Vikaspuri
New Delhi- 110018

Respondent

APPEARANCE:

For Complainants: Mr Nilotpal Shyam (Adv)
For Respondents: Mr. Ravi Agarwal (Adv)

ORDER

1. This is a complaint filed by Sh. Sanjev Chatrath and Urmila Chatrath (also called as buyers) under section 31 of The Real



Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.

2. As per complainants, they jointly booked a flat in respondent's project CHD VANN, situated at sector-71, Gurugram on 29.04.2014 and made payment of Rs 9,00,000 as booking amount. The respondent issued an allotment letter dated 03.05.2014 and allotted an apartment admeasuring 1941 sq. ft. for a total consideration of Rs 1,46,93,640 including BSP, EDC, IDC etc. A buyer's agreement dated 18.10.2014 and supplementary buyer's agreement dated 14.11.2014 were executed between them.
3. As per the Clause 12 of buyer's agreement, the possession of the said premises ^{was} ~~is~~ proposed to be delivered by the developer to the allottee within 42 months from the date of execution of buyer's agreement, with grace period of 6 months. In this way, possession ought to have been delivered at the most by 18.10.2018 but respondent failed to complete the construction work and consequently to deliver possession of the same till date.
4. The respondent does not have the required fund to complete the project and in meeting dated 16.03.2019, the respondent accepted that the work at the site has been stalled for more than 2 years. The license granted by DTCP was valid only upto



18.03.2018 and the respondent is without valid license now. The building plan for the project has also expired on 11.04.2019. Under these circumstances it is not factually and legally conceivable that the respondent would complete the construction work and get the occupation certificate for the project.

5. They (complainants) have made timely payment of Rs 95,21,698 i.e. 70 % of entire agreed consideration along with miscellaneous and additional charges etc, but the respondent has breached the fundamental term of the contract by inordinately delaying the delivery of the possession. The respondent has committed gross violation of the provisions of section 18(1) of the Act
6. The complainants have sought refund of entire amount of Rs 95,21,698/-paid by them, alongwith 18 % interest from date of each payment and refund of the charges collected on account of parking along with 18 % interest , compensation at the rate of 18 % p.a. and Rs 5,00,000 for mental agony and harassment, Rs 10,00,000 as compensation for loss of opportunity cost and Rs 1,00,000 towards litigation charges.
7. The particulars of the project, the details of sale consideration etc are reproduced here as under in tabular form:

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S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" CHD VANN", Sector 71, Gurugram, Haryana
2.	Project area	10.54 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	52 of 2008 dated 19.03.2008 valid up to 18.03.2018
5.	Name of licensee	Rao Phool Singh and others
6.	RERA Registered/ not registered	Registered
UNIT DETAILS		
1.	Unit no.	CVN-T 06-09/01 (Pg. No 35 of complaint)
2.	Unit measuring	1941 sq. ft. (Page No.35)
3.	Date of Booking	29.04.2014
4.	Date of Allotment	03.05.2014 (Pg. of 32 of complaint)
5.	Date of Buyer's Agreement	18.10.2014 (Pg. No 34 of compliant)
6.	Date of Supplementary Buyer's agreement	14.11.2014
7.	Due Date of Delivery of Possession	18.10.2018



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	As per Clause No. 12 : The possession of said premises is proposed to be delivered within 42 months from the date of execution of buyer's agreement with 6 months grace period (Page No. 44 of the compliant)	
8.	Delay in handing over of possession till date	2 years 10 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 1,46,93,640 /-
10.	Amount paid by the complainants	Rs 95,21,698 /- (Statement of accounts annexed with complaint Page No. 62)
11.	Payment Plan	Construction Linked payment plan

8. The respondent contested the complaint by filing a reply dated 13.01.2020. It is averred that there is an amount of RS 21,465.01 due on the part of complainant as on 15.11.2019. The complainant has sought refund of the paid amount only due to sudden decline in price of the properties.
9. The time period stipulated in buyer's agreement was tentative and is subject to force majeure events. Moreover, the National Green Tribunal had imposed restriction at the

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site due to which it (respondent) had to stop construction activities between May 2015 to August 2015. On 10.11.2017 the office of District Town Planner had directed stoppage of all construction activities in Gurugram. The labour and various other factors also contributed to the slowdown in construction work.

10. It is further averred that the project is registered with the RERA authority and as per RERA registration certificate the respondent is committed to complete the project by 28.07.2021, the complainants cannot claim possession of the unit before said date. The construction is almost complete and only interior and finishing work is required to be done and the same is in progress. The ^{complaint} ~~complaint~~ has been filed on false and frivolous grounds and is liable to be dismissed.
11. I have perused the documents on record and have heard the learned counsels for parties
12. As stated earlier, even after adding six months of grace period the respondent was obliged to handover the possession of the unit in question to the complainants till 18.10.2018. As per respondent, construction work remained stopped from May 2015 to August 2015 due to an order passed by National Green Tribunal. Even if this period is also added, due date of possession comes out to be 18.01.2019. Although, respondent referred some order of District Town Planner, Gurugram dated 10.11.2017, it is not clarified as till when, construction was hampered due to said order. It is not claim of respondent




that project is still complete or unit in question is worth occupying. According to Ld. Counsel for complainants only structure has been done.

13. It is not denied that complainants have already paid Rs 95,21,698 out of the total consideration of Rs 1,46,93,640. It is well settled that a buyer cannot be made to wait for his/her dream unit indefinitely. Respondent has grossly failed in its obligation to complete and handover possession of unit to complainants as per agreement. In view of section 18 of Act, the complainants are entitled to get of amount, paid by them with interest and compensation.

14. Complaint in hand is thus allowed and respondent is directed to refund entire amount received from complainants i.e. 95,21,698 within 90 days from today, with interest @ 9.5 % p.a. including parking charges. A cost of Rs 1 lac is also imposed upon respondent to be paid to the complainants.

26.08.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 03.09.2021