

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

Complaint no. : 3674 of 2019

Date of decision : 09.09.2021

RAMESH KAPAHI AND ASHU KAPAHI
R/O : Seema CGHS Ltd., Flat No. E -64,
Plot No. -07, Sector-11, Dwarika,
New Delhi-110075

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:

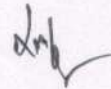
Mr Nilotpal Shyam (Adv)

For Respondents:

Mr. Ravi Agarwal (Adv)

ORDER

1. This is a complaint, filed by Sh. Ramesh Kapahi and Ashu Kapahi (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the



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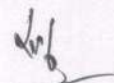
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Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.

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 1,46,87,639 including BSP, EDC, IDC etc.
3. Subsequently buyer's agreement dated 27.10.2014 and supplementary buyer's agreement dated 15.11.2014 was executed between them, incorporating their respective rights and obligations in respect of the said transaction.
4. As per the Clause 12 of buyer's agreement, the possession of said premisses was to be delivered within 42 months from the date of execution of buyer's agreement, with grace period of 6 months. Even after adding grace period, the possession ought to have been delivered by 27.10.2018 but respondent failed to complete the construction work and consequently failed to deliver the same till date.
5. The respondent does not have the required fund to complete the project. 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 more than a year has elapsed and respondent is without valid license. The building plan for the project has also expired on 11.04.2019 and 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.

6. The complainants have made payment of Rs 95,21,698 i.e. 70 % of entire agreed consideration along with miscellaneous and additional charges etc on time, but the respondent has breached the fundamental term of the contract by inordinately delaying the delivery of the possession. All this amounts to gross violation of the provisions of section 18(1) of the Act. In this way, complainants are forced to file present complaint, seeking refund of entire amount of Rs 95,21,698/- alongwith 18 % interest compounded quarterly 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, in tabular form are reproduced as under:


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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 06-11/01 (Pg. No 36 of complaint)
2.	Unit measuring	1941 sq. ft. (Page No.36)
3.	Date of Booking	29.04.2014
4.	Date of Allotment	03.05.2014 (Pg. of 29 of complaint)
5.	Date of Buyer's Agreement	27.10.2014 (Pg. No 35 of complaint)
6.	Date of Supplementary Buyer's agreement	15.11.2014
7.	Due Date of Delivery of Possession As per Clause No. 12 : The possession of said premises is	27.10.2018

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	proposed to be delivered within 42 months from the date of execution of buyer's agreement with 6 months grace period (Page No. 45 of the complaint)	
8.	Delay in handing over of possession till date	2 years 11 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 1,46,87,639 /-
10.	Amount paid by the complainants	Rs 95,21,698 /- (Statement of accounts annexed with complaint Page No. 60)
11.	Payment Plan	Construction Linked payment plan

8. As per tracking report of speed post (India Post), notice of complaint was served upon respondent on 26.08.2019. Despite filing any written reply, respondent filed an application seeking rejection of complaint.

9. It is averred that under The Real Estate (Regulation and Development) Act 2016 and The Haryana Real Estate (Regulation and Development) Rules 2017, the Adjudicating officer, RERA, Haryana does not have any jurisdiction to entertain the complaint for refund and the only power granted to the Adjudication Officer under the said Act of 2016 and Rule,

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2017 is to grant compensation and interest. The power to give refund of the amount paid by the allottee to the promoter is not expressly mentioned in the Rule 29 of The Haryana Real Estate (Regulation and Development) Rules 2017 and Section 72 of the Act.

10. As per Section 86 of Act of 2016, every rule which is made without legislature and every notification issued shall be laid down before Parliament. If any notification/regulation/rule issued by the Authority gives the power to the Adjudicating Officer to decide the cases related to refund, the same cannot be enforced, unless it is presented before both the houses of parliament. As no such procedure has been followed with respect to transferring of power of refund to the adjudicating officer, such transfer of power cannot be said to be as per law.

11. It is submitted by learned counsel for respondent that this complaint pertains to compensation and interest, for grievance under sections 11(4), 12 & 18 of the Act, which lies before the Real Estate (Regulation and Development) Authority (in brief the authority), adjudicating officer is not empowered to try this complaint.

12. Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before the

Hon'ble Haryana Real Estate Appellate Tribunal in case of **Sameer Mahawar Vs M G Housing Pvt Ltd.** Where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the Rules of 2017. In September 2019 Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was further challenged before the Apex Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein the Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana High Court referred above. Said special leave petition is still pending before the Apex Court.

13. When the order of Hon'ble Punjab & Haryana high Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, which amounts restoration of status qua ante i.e. when the complaints seeking refund, compensation and interest were entertained by the

Adjudicating Officer. Considering all this, I don't find much weight in this plea of respondent.

14. Cases under Real Estate(Regulation and Development) Act, 2016 are being disposed off through summary procedure. This forum as well as the Authority are bound to decide the matters within 60 days unless reasons are given in writing. All this shows that Legislature intended earlier disposal of these matters. Respondent could take its defence in its reply including the question of jurisdiction. No date is mentioned on this application. Surprisingly, affidavit annexed with this application is also undated. Application in hands appears to have been filed just to get the matter delayed.

15. Respondent did not opt to file reply to the complaint. Same did not contradict contentions raised by complainants. In such circumstances, facts disclosed in complaint are presumed to be true.

16. It is also plea of complainant³ that licence granted to respondent by DTCP was valid upto 18.03.2018 and respondent is now without any valid licence.

17. It is well settled that a buyer cannot be made to wait indefinitely for his/her dream house particularly when same is paying his/her dues in time.

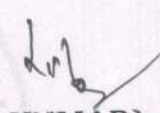
18. Considering facts mentioned above, it is well established that respondent failed to deliver possession of unit in agreed time

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and also same has no valid licence to continue with the project. Complaint in hands, is allowed and respondent is directed to refund the amount received from the complainants i.e. Rs.95,21,698/- to the latter, within 90 days from today alongwith interest @9.30%p.a. from the date of payments till its realisation. Same is also burdened with cost of Rs.1,00,000/- to be paid to the complainants.

File be consigned to the Registry.

09.09.2021



(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 13.09.2021.

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