

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

Complaint no. : 3777 of 2019

Date of decision : 24.08.2021

VIJAY PATIL
R/O Flat No. 301, Tower-09,
The Close North, Nirvana Country
Gurugram, Haryana-122018

Complainant

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 Complainant: Mr Nilotpal Shyam (Adv)

For Respondents: Mr. Ravi Agarwal (Adv)

ORDER

1. This is complaint filed by Vijay Patil (also called as buyer) 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 respondent/promoter.

2. As per complainant, he booked a flat in respondent's project **CHD VANN**, situated at sector-71, Gurugram on 26.05.2014 and made payment of Rs 9,00,000 as booking amount. The respondent issued an allotment letter dated 10.06.2014 and allotted an apartment admeasuring 1941 sq. ft. for a total consideration of Rs 1,51,13,735.50 including BSP, EDC, IDC etc. A buyer's agreement dated 20.10.2014 and supplementary buyer's agreement dated 15.11.2014 were executed between them.
3. As per the Clause 12 of buyer's agreement, the possession of the said premises was 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 most by 20.10.2018 but respondent failed to complete the construction work and consequently to deliver the possession of the unit 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 he respondent would complete the construction work and get the occupation certificate for the project.

5. He (complainant) has made timely payment of Rs 98,03,734.51 .ie. 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 complainant has sought refund of entire amount of Rs 98,03,734.51/- paid by him, alongwith 18 % p.a. compounded 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 05-05/03 (Pg. No 33 of complaint)
2.	Unit measuring	1941 sq. ft. (Page No.35)
3.	Date of Booking	26.05.2014
4.	Date of Buyer's Agreement	20.10.2014 (Pg. No 32 of compliant)
5.	Date of Supplementary Buyer's agreement	15.11.2014
6.	Due Date of Delivery of Possession As per Clause No. 12 : The possession of said premises is proposed to be delivered within 42 months from the date of	20.10.2018

	execution of buyer's agreement with 6 months grace period (Page No. 42 of the compliant)	
7.	Delay in handing over of possession till date	2 years 10 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 1,51,13,735.50 /-
9.	Amount paid by the complainants	Rs 98,03,734.51 /- (Statement of accounts annexed with complaint Page No. 60)
10.	Payment Plan	Construction Linked payment plan

8. The respondent contested the complaint, by filing a reply dated 09.10.2019. It is averred that complainant had agreed and undertaken to make timely payment. He 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 imposed restriction at the 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

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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 complainant 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 compliant 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 20.10.2018. 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 complainant only basic structure has been raised.

13. It is not denied that complainant has already paid Rs 98,03,734.51 out of the total consideration of Rs 1,51,13,735.50. 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 complainant, as per agreement. In view of section 18 of Act, the complainant is entitled to get refund of amount paid by him with interest and compensation.

14. Complaint in hands is thus allowed and respondent is directed to refund entire amount received from complainant i.e Rs 98,03,734.51 within 90 days from today, with interest @ 9.3 % p.a including parking charges. A cost of Rs 1 lac is also imposed upon respondent, to be paid to the complainant.

24.08.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram