

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

Complaint no. : 5548 of 2019

Date of decision : 15.09.2021

UMA GOYAL  
R/O : H. No. 1042, Sector-14,  
Gurgaon, Haryana

**Complainant**

Versus

M/S CHD DEVELOPERS LIMITED.  
ADDRESS: SF-16-17, First Floor,  
Madame, Bhikaji Cama Bhawan,  
Bhikaji Cama Place, New Delhi.

**Respondent**

**APPEARANCE:**

For Complainant:

Mr Yogesh (Adv)

For Respondents:

Mr. Ravi Agarwal (Adv)

**ORDER**

1. This is complaint filed by Uma Goyal (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, on 29.04.2014 she booked a flat in respondent's project **CHD VANN**, situated at sector-71, Gurugram and made payment of Rs 8,00,000 as booking amount. The respondent issued an allotment letter dated 03.05.2014 and allotted an apartment admeasuring 1257 sq. ft. for a total consideration of Rs 92,68,374.62 including BSP, EDC, IDC etc. A buyer's agreement dated 05.11.2014 and supplementary buyer's agreement dated 19.11.2014 were executed between them.
3. As per the Clause 12 of buyer's agreement, the possession of the said premisses 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 05.11.2018 but respondent failed to complete the construction work and consequently to deliver the possession of the unit till date.
4. She (complainant) has made timely payment of Rs 65,42,951.33 i.e. 70 % of entire agreed consideration along with miscellaneous and additional charges etc, but the respondent has breached the fundamental term of the

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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.

5. The complainant has sought refund of entire amount of Rs 65,42,951.33 /- paid by her, alongwith interest @ 18 % p.a., Rs 1,50,840 and Rs 55,000 towards litigation charges.
6. The particulars of the project, the details of sale consideration, etc are reproduced here as under in tabular form:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
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
<b>UNIT DETAILS</b>		
1.	Unit no.	CVN-T 07 -02/03 (Pg. No 34 of complaint )
2.	Unit measuring	1257 sq. ft. (Page No.34)

3.	Date of Booking	29.04.2014
4.	Date of Allotment letter	03.05.2014 (Pg. No. 31)
5.	Date of Buyer's Agreement	05.11.2014 (Pg. No 32 of complaint)
6.	Date of Supplementary Buyer's agreement	19.11.2014
7.	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 execution of buyer's agreement with 6 months grace period (Page No. 43 of the complaint)	05.11.2018
8.	Delay in handing over of possession till date	2 years 09 months
<b>PAYMENT DETAILS</b>		
9.	Total sale consideration	Rs 92,68,374.62
10.	Amount paid by the complainants	Rs 65,42,951.33 (Statement of accounts annexed with complaint, Page No. 80 A)
11.	Payment Plan	Construction Linked payment plan

7. Despite filing any written reply, the respondent has filed an application for rejection of complaint on the ground that it is not

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maintainable before Adjudicating officer. 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, 2016 and Rule, 2017 is to grant compensation ~~and~~ etc but the power to give refund of the amount paid by the allottee to the promoter is not expressly mentioned in the Rule 29 of Rules 2017 or Section 72 of Act of 2016.

8. 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 ~~acquired~~ <sup>required</sup> 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.

9. 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 substance in plea of respondent that this forum has no jurisdiction to try and entertain complaint in hands.
10. As per records, notice of complaint was issued to respondent in compliance of order of authority dated 03.12.2019, through speed post as well as through e-mail. Despite filing any written reply, respondent filed an application mentioned above. 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 exceptional circumstances. All this shows that



Legislature intended earlier disposal of these matters. Respondent could take this pre-objection in its reply i.e the question of jurisdiction. Application in hands appears to have been filed just to get the matter delayed, same is dismissed.

11. According to complainant, as per clause 12 of Buyer's agreement, the possession of apartment was to be delivered within 42 months from the date of execution of said agreement with grace period of six months. Even counting grace period, date of delivery comes to 05.11.2018. According to same, the project is no where near completion. Even learned counsel for respondent did not claim during arguments that project is complete or unit in question is ready to be delivered.
12. On 23.07.2021, counsel for respondent undertook to file an affidavit, showing stages of construction along with latest photographs and how much time they may take to complete the project. The respondent has filed an affidavit of Vikas Verma, dated 09.08.2021, wherein it has been mentioned that Tower 07 is 82.7 % complete but as no date and time has been mentioned, <sup>here</sup> as when <sup>the</sup> construction work will be completed, <sup>the</sup> said affidavit cannot be said to be as per <sup>the</sup> order dated 23.07.2021.
13. Considering facts discussed above, it is well proved that respondent failed to deliver possession of unit in agreed time. Complaint in hands, is allowed and respondent is directed to refund the amount received from the complainant i.e.

Rs 65,42,951.33 to the complainant, within 90 days from today, alongwith interest @9.30%p.a. from the date of payment till its realisation. Same is also burdened with cost of Rs.1,00,000/- to be paid to the complainant.

File be consigned to the Registry.

15.09.2021

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

Judgement uploaded on 25.09.2021.