



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

**Complaint No. : 929/2020**  
**Date of Decision : 15.09.2021**

**Rajneesh Madhu & Aarti Sharma**  
**R/o 143C, Loyang Besar Close,**  
**Watercrest Condo,**  
**Singapore-509042**

**Complainant**

**V/s**

**M/s CHD Developers Limited**  
**SF-16-17, First Floor**  
**Madam Bhikaji Cama Bhawan,**  
**11, Bhikaji Cama Place, New Delhi-110066**

**Respondent**

**Present:**

**For Complainants:**  
**For Respondent:**

**Mr. Sushil Yadav, Advocate**  
**None**

**ORDER**

1. This is a complaint filed by Shri Rajneesh Madhu and Aarti Sharma (also called as buyers) under Section 31 read with section 71 of The Real Estate(Regulation and Development) Act, 2016 (in brief 'The Act') against M/s CHD Developers Ltd.(also referred as developer seeking, directions to refund a sum of Rs.60,03,290/- alongwith

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interest, on compounded rate, from the date of booking and Rs.5,00,000/- as compensation, for mental harassment.

2. According to the complainants, the respondent/developer launched a project in the name and style of " **CHD VANN**". Relying on promise and undertakings given by respondent, they booked a residential unit admeasuring 2330 sq ft in the aforesaid project of respondent for total sale consideration of Rs.1,83,47,670/- which includes BSP, car parking,IFMS, club membership etc. A builder buyer agreement was executed on 15.11.2014. Out of total sale consideration stated above, they have paid a sum of Rs.60,03,290/- till date.
3. By virtue of clause 12 of BBA, the respondent had agreed to deliver the unit in question within 42 months from the date of execution of agreement, with an extended period of six months. In this way, unit was to be delivered to them by 15.11.2018. They were regularly visiting the project site but surprised to see the slow pace of construction despite making regularly/timely payments according to construction linked payment plan. Failing to get any positive response and offer of possession of the allotted unit from the respondent, they are forced to file present complaint seeking refund of their deposited amount alongwith interest and compensation.
4. Brief facts of the case are reproduced in tabular form as under:

<b>Project related details</b>		
<b>I.</b>	<b>Name of the project</b>	<b>"CHD VANN"</b>
<b>II.</b>	<b>Location of the project</b>	<b>Sector 71, Gurugram</b>
<b>III.</b>	<b>Nature of the project</b>	<b>Residential</b>



Unit related details		
IV.	Unit No. / Plot No.	CVN-T09-00/01
V.	Tower No. / Block No.	T09
VI	Size of the unit (super area)	Measuring 2330 sq ft
VII	Size of the unit (carpet area)	-D0-
VIII	Ratio of carpet area and super area	-D0-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	25.06.2014
XI	Date of Allotment(original)	04.07.2014
XII	Date of execution of BBA (copy of BBA be enclosed)	15.11.2014
XIII	Due date of possession as per BBA	15.11.2018
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 clause 4.2. of BBA	-
Payment details		
XVI	Total sale consideration	Rs. 60,03,290.47/-
XVII	Total amount paid by the complainants	Rs.1,83,47,670/-/-

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

6. 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.

7. 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 alleging that this forum has no jurisdiction to try and entertain complaint in hands.
8. Service of notice is not denied on behalf of respondent. 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 otherwise to give reasons in writing. 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.
9. 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

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months. Even by including grace period, date of delivery comes to 15.11.2018. According to complainants, the project is nowhere near completion. Respondent did not claim that project is complete or unit in question is ready to be delivered.

10. Considering facts discussed above, it is well proved that respondent has 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 60,03,290.47 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 complainant.

File be consigned to the Registry.

15.09.2021

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

Judgement uploaded on 08.10.2021.