



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

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

Complaint No. : 3062/2019
Date of Decision : 20.09.2021

S. Gurneek Singh & Mrs Ravinder Kaur
A-199, Third Floor, Defence Colony,
New Delhi

V/s

Complainants

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

M/s Roots Developers Private Ltd.
F-17, Central Plaza, Gold Course Road,
DLF Phase-5, Sector-53
Gurugram

Respondents

**Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Present:

For Complainants:

Mr. Upmanyu Kumar, Advocate

For Respondent:

Mr Ravi Aggarwal, Advocate

ORDER

This is a complaint filed by S. Gurneek Singh & Mrs Ravinder Kaur(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 called as developer) seeking, directions for refund of Rs.95,19,687.56p. alongwith prescribed rate of interest compounded monthly on entire payment made by them.

2. According to the complainants, the respondent launched a project in the name and style of " CHD VANN". Relying on promise and undertakings given by them (respondents), they(complainants), on 17.07.2014, booked a residential unit bearing No.CVN-T08-07/03 admeasuring 1941 sq ft in the aforesaid project. Total sale consideration was agreed to be Rs.1,22,62,267/- which included BSP, car parking, IFMS, club membership etc. A builder buyer agreement(BBA) was executed on 13.11.2014. Out of total sale consideration of Rs.1,22,62,267/-, they paid Rs.95,19,687.56p.

3. By virtue of clause 12 of BBA, the respondents had agreed to deliver possession of unit in question, within 42 months from the date of execution of agreement i.e. by 12.05.2018, with an extended period of six months. They(complainants) were regularly visiting the project site but were surprised to see the slow pace of construction, despite the fact that they were making regularly and timely payments. They had opted for construction linked payment plan. In order to make above mentioned payment, they had to obtain loan of Rs.50,00,000/- from ICICI Bank, on interest @ 10% p.a.

4. Even after expiry of about 10 months from the proposed date of possession of unit in question, neither the respondents delivered the possession nor did they inform them about the status of project and unit in question. Vide their email dated 17.03.2019, they(complainants) requested respondent No.1 to update them, with the current status of project and to disclose proposed date of possession of booked unit. Respondent No.1 vide

its email dated 26.03.2019 admitted that project is still incomplete but stated that they were trying their best, to complete it. Failing to get any positive response and offer of possession of the allotted unit from the respondents, they were forced to file present complaint, seeking refund of their deposited amount, alongwith interest and compensation.

5. Brief facts of complainants case are reproduced in tabular form, as under:

Project related details		
I.	Name of the project	"CHD VANN"
II.	Location of the project	Sector 71, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	CVN-T08-07/03
V.	Tower No. / Block No.	T08
VI	Size of the unit (super area)	Measuring 1941 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	17.07.2014
XI	Date of Allotment(original)	13.11.2014
XII	Date of execution of FBA (copy of FBA be enclosed)	13.11.2014
XIII	Due date of possession as per BBA	12.05.2018

XIV	Delay in handing over possession till date	About three years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause 12 of FBA	-
Payment details		
XVI	Total sale consideration	Rs. 1,22,62,267/-
XVII	Total amount paid by the complainants	Rs.95,19,687.56p.

6. Respondents while contesting the claim of complainants raised preliminary objection with regard to jurisdiction of this forum, to try and entertain present complaint. It is alleged that Real Estate(Development and Regulation) Act, 2016 does not confer any jurisdiction upon this forum to entertain a complaint for refund, only power granted under said Act and rules is made thereunder is for compensation and interest. The power to refund has not been provided in Rule 29. As said rule has not been amended granting jurisdiction to the adjudicating officer for refund of amount paid by the buyers. Same cannot be exercised by adjudicating officer. On these averments, the respondents sought dismissal of complaint.

7. 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.

8. 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. No reason to infer that this forum has no jurisdiction to try and adjudicate the complaint, seeking refund.

9. Following facts as alleged by complainants are not denied by respondents:

- i) complainants booked residential unit No. CVN T08-07/03 on 17.07.2014 with project 'CHD VANN" being developed by respondent;
- ii) complainants have paid Rs.95,19,687.56p. out of total sale consideration of Rs.1,22,62,267/- under construction linked payment plan;
- iii) possession of said unit was to be delivered within 42 months of

date of execution of BBA, with extended period of six months;
and

iv) that BBA was executed on 13.11.2014

10. The allegation of complainants that project is still incomplete and no work is going on at site, is denied by the respondent. It is averred that construction is almost complete, only interior and finishing work is required to be completed. There is no deliberate or inordinate delay on the part of respondents. According to respondent, whatever delay has occurred, it was due to various orders passed by Haryana State Pollution Control Board and National Green Tribunal, New Delhi (in brief NGT) where these constitutional entities took very serious view regarding pollution, resulting from building construction and allied activities, emitting dust. Same directed to stop construction activities in NCR between May 2015 to August 2015. Further, on 10.11.2017, office of District Town Planner directed to stop construction activities.


11. It is further the case of respondents that due to demonetization of currency notes, a situation of financial crisis arose which affected not only respondents but every person in the country. Sudden scarcity of funds and currency notes affected the construction work. All these factors slowed down construction and other ancillary activities.

12. Even after counting six months of grace period, due date of possession comes to be 13.11.2018. Respondents blamed orders passed by NGT, Haryana Pollution Control Board and District Town Planner, Gurugram, due to which construction was stopped. Copy of no such order is placed on record. Even otherwise, as per respondent due to such orders, construction remained stopped from May 2015 to August, 2015 i.e. four months. Even than, project would have been completed till 13.04.2019.

13. Learned counsel for respondents did not claim during arguments that project is complete or unit in question is ready to be delivered even on the date of arguments. It is claimed that only structure is complete and interior and finishing works remain to be done. It is well established that respondents failed to deliver possession of unit in agreed time. Complaint in hands, is thus allowed and respondents are directed to refund the amount received from the complainant i.e. Rs.95,19,687.56p to the (latters) within 90 days from today, alongwith interest @9.30%p.a. from the date of each payment till its realisation. Respondents are burdened with cost of litigation Rs.50,000/- to be paid to the complainants.

14. File be consigned to the Registry.

20.09.2021


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

Judgement uploaded on 12.10.2021.