

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint No. RERA-PKL-858 of 2018

Devi Bhushan & Anamika Shri ... Complainants.

Versus

M/s CHD Developers Ltd. ... Respondent.

Date of hearing:- 05.02.2019

No. of Hearing: 3rd

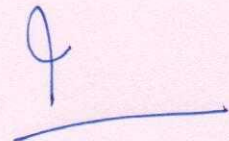
Coram:- Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member

Appearance:- Shri J.C. Manjhu & Vivek Sethi Counsel for
Complainants
Shri Anup Gupta, Counsel for Respondent.

ORDER:-

1. This matter was adjourned for amicable settlement of dispute on the request of both the parties on the earlier dates. Today, both the parties stated that there is no possibility of amicable settlement, therefore the matter was heard and decided on merits.

2. The case of the complainants is that they booked floor No. O/B-SF220 measuring area 1075 sq. ft., in the project named "CHD-Paradiso



Floors” of the respondent in district Karnal. They paid Rs. 1,45,000/- as booking amount on 14.04.2015. They were issued an allotment letter dated 25.06.2015. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 25.06.2015. Payments were to be made under Construction linked payment plan. As per clause 12 of the FBA delivery of the apartment was to be made within 21 months from the date of approval of building plan with an additional 3 months as grace period. They state that the building plans of the respondent were approved in Aug,2014, thus deemed date of delivery was in Aug,2016.

The complainants have paid about Rs.31,04,533/- against the Basic Sale Price of Rs. 27,90,000/- till date. Total sale consideration of the apartment was Rs.28,70,625/- including EDC, IDC,PLC, Service Tax etc.

The grouse of the complainants is the respondent has offered them possession of the unit on 05.10.2018 i.e. after a delay of about more than two years. Therefore, they are seeking compensation along with interest for delayed possession from due date of possession upto actual date of delivery of possession.

3. The respondent denied all the allegations and has raised several preliminary objections as follows:

- i. The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present case because the agreement was executed between the parties prior to the


coming into force of the Act, hence the terms of agreement entered into between the parties only shall be binding on the parties.

- ii. Respondent denies the jurisdiction of this Authority on the ground that, the present complaint is not maintainable as the floor of the complainants is less than 500 sq. mts of which registration is not required as per section 3(2) (a) of RERA Act, 2016.
- iii. Respondent also denies the jurisdiction of this Authority on the ground that present complaint is not maintainable since the complainants have already taken possession of the floor vide Possession Certificate dated 05.10.2018. He states that the complainants have given an undertaking in the possession certificate that he has taken over the possession after full satisfaction in all respects and no claim against the respondent survives on any account in regard to the said unit. He further states that since the complainants have deliberately concealed the factum of issuance of Possession Certificate dated 05.10.2018 and their undertaking therein from this Authority therefore, the present complaint deserves to be dismissed.

- iv. Respondent states that the total sale consideration was exclusive of CAM charges, Stamp Duty charges, Power back-up charges, Service taxes, therefore the total consideration was not Rs.28,70,625/-. It was Rs.29,13,625/-.
4. The Authority has considered written as well as oral pleadings of both the parties in detail. It observes and orders as follows:-

i. Jurisdiction:

First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the detailed orders passed by this Authority in **complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.** The logic and reasoning in that complaint are fully applicable on the facts of this case as well. RERA Act, 2016 provides for comprehensive remedies to the home buyers in the projects launched before coming into force of RERA Act as well as after coming into force of Act. Wherever substantive obligations on the part of either of the parties still subsist, the Authority



will have jurisdiction to deal with those matters to resolve them in a fair and just manner. Admittedly, in the present case although the possession was handed over to the complainants on 05.10.2018 and they have taken the same without any protest, and requisite documents thereof have been signed, but the right of getting conveyance deed executed in their favour still subsists against the respondent, therefore this matter will fall within the preview of this Authority to the extent of getting the conveyance deed executed in favour of complainants.

ii. **Jurisdiction on account of size / area of unit:**

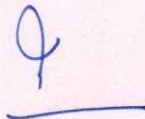
The second challenge to the jurisdiction has been made on the ground that the floor area on which the floor to the complainants allotted measures less than 500 sq. mts, thus, this project was not required to be registered therefore, the jurisdiction of this Authority does not extends to this case. This objection is also not sustainable because this plot/floor is a part of larger colony being developed by the respondent. The said

9

plot/floor is not an independent project. Numerous such plots along with other buildings are being developed by the respondents as a part of this project and the licence. The jurisdiction of this Authority is to be determined keeping the whole project in view and not the individual plots of the colony.

iii. Delay compensation:

As regards the prayer of the complainants for compensation along with interest thereon on account of delay in delivery of possession, the Authority, is of the considered opinion that once the possession has been handed over to the complainants 05.10.2018 and they had taken the same without any protest and the documents thereof have been signed, the contract between the parties stands concluded. Therefore, this Authority will not have jurisdiction to adjudicate upon the issue of compensation payable by the respondent on account delay in delivery of possession. The complainants have also admitted, vide possession certificate dated

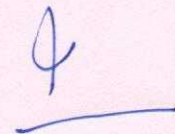


05.10.2018, that they are fully satisfied with the unit and that no claim against the respondent survives on any account in regard to the said unit. This Authority cannot interfere in the concluded contracts except in respect of any subsisting obligation that remains to be discharged. In this case the only right of the complainants which subsists against the respondent and which can be adjudicated upon by this Authority is qua the execution of conveyance deed in their favour.

At this stage, the complainants state that they would be satisfied if the respondent executes conveyance deed in their favour and also hand over one key of the unit to them.

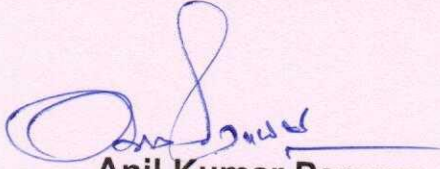
5. Learned Counsel for respondent made a statement that the respondent is willing and ready to handover the second key to the complainants and will execute the conveyance deed after the complainants clear their dues.

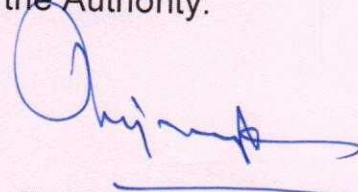
6. The Authority, in view of the above submissions, directs both the parties to fulfil their remaining obligation including the payment of outstanding amount if any by the complainants and execution of the conveyance deed by the respondent in favour of the complainants within

A handwritten signature or mark in blue ink, consisting of a stylized character above a horizontal line.

a period of 45 days of the uploading of this order on the website of the Authority.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.


Anil Kumar Panwar
Member


Rajan Gupta
Chairman