

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 2240 of 2018
First date of hearing : 20.03.2019
Date of decision : 20.03.2019

Mrs. Madhu Nanda

R/o : I-12, South City-1, Gurugram-122001

Complainant

Versus

M/s CHD Developers Ltd.

Office : SF-16-17, First Floor, Madame
Bhikaji Cama Bhawan, Bhikaji Cama Place,
New Delhi- 110066

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE

Complainant in person Advocate for the complainant

Shri Tejinder Singh proxy
counsel for Shri Anup Gupta, Advocate for the respondent
Advocate for the respondent



ORDER

1. A complaint dated 08.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Madhu

Nanda against the promoters M/s CHD Developers Ltd on account of violation of clause 13 of the apartment buyer's agreement executed on 12.12.2012 for unit described below in the project "106 Golf Avenue" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement was executed on 12.12.2012 i.e prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"106 Golf Avenue" in Sector 106, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	T07-11/04
4.	Project area	12.344 acres
5.	Registered/ not registered	Not registered
6.	DTCP license	69 of 2012



7.	Date of apartment buyer's agreement	12.12.2012
8.	Total consideration	Rs. 88,17,576.75/- (as per payment plan dated 06.10.2012)
9.	Total amount paid by the complainant	Rs. 80,95,981/-
10.	Payment plan	Construction linked plan
11.	Date of delivery of possession. (as per clause 13 : 42 months from date of agreement + 6 months grace period)	12.12.2016
12.	Delay of number of months/ years	2 years 3 months 8 days
13.	Penalty clause	Clause 13- Rs. 10/- per sq. ft. per month of the super area

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for unit no. T07-11/04 according to which the possession of the aforesaid unit was to be delivered by 12.12.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.



5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 20.03.2019. The case came up for hearing on 20.03.2019. The reply has been filed on behalf of the respondent.

Facts of the complaint

6. The complainant submitted that she booked a residential flat in the project of the respondent "106 Golf Avenue" at Sector 106, Gurgaon in Daulatabad Village, Gurgaon, Haryana under apartment buyers agreement dated 12.12.2012.
7. The complainant submitted that after collecting 95% payment of the basic sale price including car parking charges with service tax plus EDC / IDC charges in full as per the agreement, amounting to Rs.80,95,981.08 till December 2015, the respondent suspended construction from early 2016 till March 2018. In Feb. 2018, in meeting with buyers the respondent promised to start construction from March'2018 and complete 4 towers by Dec.'2018. In a subsequent meeting



on 04.08.2018, respondent shifted the completion date of tower -7 from December 2018 to January 2019.

8. The complainant submitted that after during complainant site visit in Dec 2018, it was found that skeleton staff and laborers were employed at project site and as per the then progress of work, the completion will extend much beyond the revised promised date
9. The complainant submitted that respondent is yet to be registered with this authority. Further, he has made false commitment to this authority to handover flats to tower-7 buyers by Feb 2019.
10. The complainant submitted that respondent license has expired and yet to be renewed.
11. The complainant submitted that though respondent has charged 100% EDC/IDC by Dec 2013 from the complainant, but did not deposit the same with exchequer, which amounts to breach of trust. Only in Oct. /Nov.'2018 he deposited, that too only 10% of the total amount.



12. The complainant also submitted that because of diversion of funds, the respondent had to avail finance from IndusInd Bank for the said project against the security of land and the buildings thereon in 2016. In spite of this arrangement no construction activity was restarted till March'2018.
13. The complainant also submitted that the respondent has wrongfully levied the parking charges of Rs.3,00,000/-
14. The complainant submitted that after several complaints against respondent have been made by various buyers of this project with this authority. The authority has given its ruling to give possession of the flats to the buyers as per the date committed by the respondent in his affidavit filed with the authority and also to pay penalty of interest on the sum paid by the complainant till he gives possession. In the instant complaint, the facts are same as of cases cited above with same respondent. This is being narrated here to facilitate judgment by this authority.



Issues raised by the complainant

15. The issues raised by the complainant are as follows :-

- I. Whether the promoter is liable for the unjustifiable delay in delivery of possession of the booked unit?
- II. Whether the respondent has wrongfully demanded parking charges?

Relief sought

16. The reliefs sought by the complainant are as follows :

- i. To direct the respondent to ensure an early date of possession with good quality.
- ii. To conduct project quality audit at respondent cost
- iii. To direct the respondent to pay interest for the period of delay at the prescribed rates,
- iv. To direct the respondent to deposit 100% EDC/IDC with concerned authorities, so that external development can take place in right earnest.
- v. To refund wrongfully levied parking charges.

Respondent's reply

17. The respondent submitted that the present reply is filled on the behalf of the answering respondent by Mr Swatantra



Saxena, Legal Manager who has been duly authorized by the board resolution dated 12.09.2018.

18. The respondent also submitted that the present complaint filed by the complainant is misconceived, erroneous and is untenable in the eyes of law.
19. The respondent also submitted that the real purpose of the complaint is to seek refund of money along with interest because of severe decline in the prices of the property and the complainant is merely speculating in the property market.
20. The respondent also submitted that the apartment buyers agreement was executed on 12.12.2012.
21. The respondent also submitted that there has been no deliberate or inordinate delay by the respondents in the completion of the construction. After the execution of the agreement, the respondents received a letter bearing no. HSPCB/GRN/2015/516 dated 01.05.2015 from the Regional Office North, Haryana State Pollution Control Board, informing the opposite party that “vide order dated 07.04.2015 and 10.04.2015 in original application no. 21 of 2014 titled as **“Vardhaman Kaushik v Union of India”**, the Hon’ble National



Green Tribunal, New Delhi has taken very serious views regarding pollution resulting from construction and other allied activities emitting dust emission and directed to stoppage of construction activities of all construction sites” and in pursuance/compliances thereto of said letter/order the respondents had to stop all the construction activities between the period May, 2015 to August, 2015. Thus, the construction could not be carried out for a period of about 4-6 months because of the order passed by the Hon’ble N.G.T. and compliance thereto in pursuance of said letter dated 01.05.2015. This period is also therefore to be excluded. The office of the District Town Planner Enforcement on 10.11.2017 had again directed stoppage of all construction activity.

22. The respondent further submitted that the construction is in full swing and is in progress despite severe slump in the real estate market and decline in the prices of properties.

Determination of issues

23. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the



authority decides seriatim the issues raised by the parties as under :

24. In respect of **first issue** raised by the complainant, the due date of possession of the project in question was 12.12.2016 and the respondent has already delayed the handing over of possession of the booked unit. Therefore, the respondent is liable to pay delay interest at the prescribed rate i.e 10.75% per annum for the period of delay till the date of delivery of possession.

26. In regard to **second issue** raised by the complainant, the attention of the authority was drawn to the approval of building plans of the said project by Director, Town & Country Planning vide memo dated 17.09.2012 highlighted by condition no. 13, which is reproduced below: -

“Condition no. 13: The basement shall be used for parking and services as prescribed in the approving zoning plan and building plans. The parking lots proposed in the scheme shall be exclusively for the use of flat owners/residents of the group housing scheme. The parking lot shall not be leased out/transferred to



any person who is not a flat owner/resident of the group housing complex. Parking lots shall form part of common areas along with other common uses, in the declaration to be filed under Apartment Ownership Act, 1983.”

27. Further, the counsel for complainant raised the issue that the conditions incorporated in the apartment buyer agreement are against the aforementioned approval, particularly parking charges. From this condition, it is very clear that basement is part of the common areas and meant for exclusive use of flat owners of group housing scheme. Therefore the authority is of the view that if the parking area is covered by three sides and is meant for exclusive use of the complainant, then the respondent is well within its right to charge parking charges.

Findings of the authority

29. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving



aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

30. In the present case, the authority has observed that as per clause 13 of the apartment buyer's agreement dated 12.12.2012 for unit no. T07-11/04, in the project "106 Golf Avenue" Sector 106, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of execution of apartment buyer's agreement + 6 months grace period which comes out to be 12.12.2016. However, the respondent has not delivered the unit in time. It was a construction linked plan. Complainant has paid Rs.80,95,981/- to the respondent against a total consideration of Rs.88,17,576/-.

Decision and directions of the authority

30. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents:

- (i) The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per



annum w.e.f 12.12.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- (iii) The complainant has stated that respondent is demanding parking charges. If the parking area is covered on three sides and is meant for exclusive use of the complainant, then the respondent is well within his right to charge parking charges.

31. Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.



32. The detailed order is pronounced.
33. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 20.03.2019

Judgement uploaded on 17.04.2019



HARERA
GURUGRAM

