



HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

Complaint No. : 300/2018
Date of Decision : 09.12.2019

Shri Vikas Bansal S/o Shri B M Bansal
R/o 406, Krishan Kunj, Plot No.14,
Sector-7, Dwarka, Delhi

Complainant

V/s

1. M/s Ramprashtha Sare Reality Pvt Ltd.
(now known as Sare Gurugram Pvt Ltd.)
E-7/12, LGF, Malviya Nagar, New Delhi
Plot No.46, Udyog Vihar, Phase-IV
Gurugram, Haryana

2. Mr Vivek Arora
G-Vector Reality, 27th floor,
MGF Megacity Mall
M G Road, Gurgaon-122002

Respondents

Argued by:

For Complainant

For Respondent

Mr. Y. K. Sharma, Adv

None

ORDER

This is a complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to Act

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of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by Shri Vikas Bansal for the refund of Rs. 45,55,191/- deposited with the respondent for booking of a flat/unit no.Po41901, 19th Floor, Building No. P-04, "The Petioles", in its project known as "Green ParC2" Crescent ParC, Sector 92 , Gurugram on account of violation of obligations of the promoter under section11(4)(a) of Real Estate(Regulation and Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	'Green ParC2, CRESCENT ParC
II.	Location of the project	Sector-92,Gurgaon, Haryana
III.	Nature of the project	Residential (construction link plan)

Unit related details		
IV.	Unit No. / Plot No.	P041901, 19 th Floor, Building No. P04, "The Petioles"
V.	Tower No. / Block No.	P04
VI	Size of the unit (super area)	2040 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	27.12.2012

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XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	01.03.2013
XII	Due date of possession as per BBA	11.09.2016
XIII	Delay in handing over possession till date	More than two years
XIV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 3.3 of BBA

Payment details

XV	Total sale consideration	Rs.1,11,03,760/-
XVI	Total amount paid by the complainant till date	Rs. 45,55,191/-

2. It is a case of the complainant that in the year 2012, respondents issued brochure inviting applications for the purchase of flat in "The Petioles" Green ParC2, Crescent ParC, Sector-92, Gurugram. Believing that document, the complainant booked a flat in their project measuring 2040 sq ft and was allotted flat No. P041901, 19th Floor, Building No. P04 against total payment of Rs.1,11,03,760/-. It is a case of the complainant that he issued two cheques for a sum of Rs.5,00,000/- and Rs.6,31,753/- dated 27.12.2012 and 02.01.2013 respectively in favour of respondent No.1 as earnest money and the same was acknowledged by the later. He was issued a allotment letter of the unit by respondent No.1 on 01.12.2013. Subsequently, BBA dated 01.03.2013 was also executed between the parties and wherein the builder/promoter agreed to hand over the possession of the allotted unit within a period of 36 months from the completion of construction. Though, the complainant had been making payments regularly and even by taking loan from ICICI Bank to fulfil the terms of BBA but the respondents failed to

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hand over the possession of the allotted unit. The complainant visited the respondents a number of times and requested them to hand over the possession of the allotted unit but with no result. So, on these broad averments, the complainant filed a complaint seeking refund of the amount deposited with the respondents besides interest and compensation.

3. But the case of respondent No.1 as set up in the reply dated 03.08.2018 is that though the complainant was allotted a unit and he paid different amounts after he was issued a letter of allotment but there is delay in the completion of the project and the same would be handed over to the allottee very soon. It was denied that there was any intentional delay in completion of the project and the answering respondent is liable to refund the amount deposited by the allottee besides interest and compensation.

4. After hearing both the parties and perusal of the case file, the learned Authority vide its order dated 30.08.2018 directed the respondents to pay interest at the prescribed rate on account of delay from the due date of possession i.e. 11.09.2016 till the date of offer of possession. Feeling aggrieved with the same, the complainant filed an appeal before the Hon'ble Real Estate Appellate Tribunal. The orders passed by the learned Authority were ordered to be set aside on 19.07.2019 and a direction was given to this forum to adjudicate the matter between the parties in accordance with law and permitting the allottee to amend the complaint in order to bring within the parameters in form CAO as provided in rule 29 of the Rules. So, in pursuant to the direction passed by the Hon'ble Appellate Tribunal, the complainant filed an amended complaint.

5. Despite notice, none turned up on behalf of the respondents and as such, vide orders dated 18.11.2019, they were proceeded against ex-parte.

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6. I have heard the learned counsel for the complainant and have also perused the case file.

7. Some of the admitted facts of the case are that on the basis of brochure inviting applications for the purchase of flats in project known as "The Petioles", Green ParC, Crescent ParC, Sector-92, Gurugram, the complainant booked a flat bearing No. .P041901, 19th Floor, Building No. P-04, "The Petioles" measuring 2040 sq ft and deposited a sum of Rs. 5,00,000/- and Rs. 6,31,753/- on 27.12.2012 and 03.01.2013 respectively. It is a fact that the BBA Annexure P-9 dated 01.03.2013 was executed between the parties. A perusal of that document shows that as per clause 3.3, the possession of the allotted unit was to be delivered to the complainant within a period of 36 months from the date of commencement of construction with grace period of six months. So, as per that document, the possession of the allotted unit was to be delivered to the complainant by 11.09.2016. However, the builder failed to offer/deliver possession of the allotted unit to the complainant even upto now and which led to the later to move for refund of the amount deposited with the former. There is nothing on the record to show that the construction of the project in which the complainant was allotted the unit is complete and any occupation certificate has been obtained. Though filing written reply before the amendment of the pleadings, a plea was taken by the respondent that possession of the allotted unit would be offered to the complainant by 31.03.2019 but no such document is on record to prove that fact. It shows that respondents have failed to offer/deliver possession of the allotted unit to the complainant. It is also evident that complainant has already deposited a sum of Rs.45,55,191/- with the respondent on different dates. So, the complainant is entitled to seek refund of that

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amount besides interest from the date of each payment at the prescribed rate of interest i.e. @ 10.25%p.a.

8. Thus, in view of discussion above, the complaint filed by the complainant is hereby accepted. Consequently, the complainant is held entitled to refund of Rs.45,55,191/- besides interest at the prescribed rate i.e. 10.25%p.a. from the date of each payment till the date of actual payment from the respondents jointly and severally.

9. The complainant shall also be entitled for a sum of Rs.20,000/- as compensation inclusive of litigation expenses.

10. The amount mentioned above shall be paid to the complainant by the respondents within a period of 90 days from the date of this order and failing which legal consequences follows.

11. Let the file be consigned to the Registry.

09.12.2019

S.C. Goyal
(S.C. Goyal)
Adjudicating Officer, 9-12-18
Haryana Real Estate Regulatory Authority
Gurugram