



HARERA
GURUGRAM

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

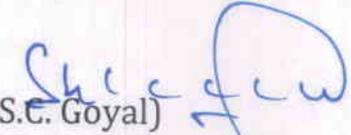
PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 02.02.2021
Complaint No.	CR/6250/2019 Case titled Sukirti Gupta VS Tata Housng Development Company Ltd
Complainant	Sukirti Gupta
Represented through	Mr N K Kantwala, Advocate
Respondent	Tata Housng Development Company Ltd
Respondent Represented through	Mr Mohd Saleem, Advocate
Last date of hearing	
Proceeding Recorded by	Pawan Sharma

Proceedings

Vide separate order of even date, the compliant is ordered to be disposed off.

2. File be consigned to the Registry.


(S.C. Goyal)
Adjudicating Officer
02.02.2021 2/2/2021



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

Complaint No. : 6250/2019

Date of Decision : 02.02.2021

**Ms. Sukriti Gupta, resident of house No.D-29,
Top floor, Saket, New Delhi-110017**

Complainant

V/s

**M/s Tata Housing Development Company Ltd.,
GF-3, Naurang House, 21, Kasturba Gandhi
Marg, New Delhi-110001**

2nd address

**TRIL Commercial Centre, Intellion Edge
First Floor, Tower-A, Sector 72
Gurugram-12201**

Respondent

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

Argued by:

(Through Video Conferencing)

For Complainant:

Mr. N. K. Kantawala, Advocate

For Respondent:

Mr. Mohd Salim, Advocate

ORDER

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

Shree...
2.2.2021

29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Ms Sukriti Gupta seeking refund a sum of Rs.2,20,38,056/- deposited with the respondent company for booking a flat measuring 2625 sq ft. bearing No T-2, 3303, in its project known as "Primanti" located in Sector 72, Gurugram, for a sum of Rs.2,28,65,625/- besides taxes etc on account of violation of obligations of the promoter under section 11(4)(a) of the Real Estate (Development and Regulation) Act, 2016. Brief facts of the case can be detailed as under:

In August, 2011, the complainant initially booked the above mentioned residential unit with the respondent-company for a total sale consideration of Rs.2,28,65,625/- besides taxes. A sum of Rs.14,00,000/- was paid towards the booking of that unit bearing no.3303 In Tower No.2 Phase-I being a part of the project Primanti situated in Sector 72, Gurugram. The complainant thereafter started depositing the amount due towards the purchase of allotted unit and paid a total sum of Rs.2,16,29,198/- upto the year 2015. So, in this way, she paid 90% of the approximate cost of the allotted unit. In March, 2016, she received an upgradation offer of the unit allotted from the respondent vide email Annexure-I. After considering that proposal of the developer, she opted for a bigger unit being Apartment No.3504 measuring 2905 sq ft for a total sale consideration of 2,58,68,625/- approximately besides applicable taxes and that unit after upgradation was allotted to her by the respondent. It was promised that the possession of that unit would be delivered to her by the respondent-company in October, 2016.

2. It is further the case of the complainant that in November, 2016, she received an another offer of upgradation of the unit from the respondent-company and possession of the same was promised to be delivered in June, 2019. After considering that request, the complainant accepted that offer as

Shri. C. C. 2/2/2021

evident from email Annexure-B. There was also another offer of upgradation received from the respondent which was accepted and the allotted unit was upgraded to unit bearing no. EF 26-A measuring 4250 sq ft for a total sale consideration of Rs. 3,88,11,000/-with applicable taxes. An Apartment Buyer Agreement was then entered into between the parties on 20.01.2017 and details of the same are as under:

Project related details		
I.	Name of the project	PRIMANTI, Sector 72, Gurugram
II.	Location of the project	Sector 72, Gurugram
III.	Nature of the project	Residential

Unit related details		
IV.	Unit No. / Plot No.	EF 26-A measuring 4250 sq ft
V.	Tower No. / Block No.	Ground Floor, EF 26A
VI	Size of the unit (super area)	Measuring 4250 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)	17.08.2011
XI	Date of Allotment(original)	23.08.2011
XII	Date of execution of ABA (copy of ABA be enclosed as annexure-B)	20.01.2017
XIII	Due date of possession as per ABA	31.08.2018

Shree 2/2/2021

XIV	Delay in handing over possession till date	More than one year
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said FBA	As per clause 10 of Apartment Buyer Agreement interest @15% p.a. for the period beyond the said period of 90days

Payment details

XVI	Total sale consideration	Rs. 3,88,11,000/-
XVII	Total amount paid by the complainant upto the year 2015	Rs.2,20,38,056/-

3. It is the case of the complainant that she booked a residential unit bearing No.3303 in its project known as "Primanti" detailed above with the respondent company in August, 2011 and paid a sum of Rs. 2,16,29,198/- i.e. 90 % of the total cost of that unit. But the respondent-developer failed to complete its construction by the due date and which led to upgradation of that unit in March 2016 and November, 2016 respectively. An Apartment Buyer Agreement was ultimately entered into between the parties with regard to the upgraded unit bearing No. EF 26A on 20.01.2017 and the due date for offering possession was 31.08.2018 with a grace period of six months. But despite the passage of that period, the respondent failed to complete construction and offer its possession to her. Even up to the extended period of June 2019, nothing materialised and which led to the withdrawal of the complainant from the project of the respondent and seeking refund of the amount deposited with it. So, on these broad averments, she filed a complaint seeking return of the amount deposited with the respondent besides interest and compensation.

Shilpa C. C. 2/2/2021

4. But on the other hand, it is the case of the respondent as set up in the written reply that though the complainant booked a unit in its project known as "Primanti" in the year 2011 but on her request, the said unit was upgraded from time to time. Ultimately, she was allotted the unit in question and the possession of the same was to be delivered by June, 2019. An Apartment Buyer Agreement was executed between the parties on 20.10.2017 with regard to that unit. Though every effort was made to complete the construction within the stipulated period but due to certain *force majeure* events beyond its control such as restrictions on the use of under ground water for construction activities, installation of sewerage plant, de-mobilisation of labour from the site, sand shortage, heavy rainfall, ban on construction activities by the National Green Tribunal and the Haryana State Pollution Control Board, demonetisation and implementation of GST etc, the construction activities could not take place smoothly and the circumstances detailed above were not within the control of the respondent. It was also pleaded that the complainant cannot take advantage of her own wrongs i.e. by getting upgradation of unit from one to another, going for better options and then seeking refund of amount deposited with the respondent. The construction of the unit in question has been completed and the complainant has already been offered possession by the respondent on 25.01.2020. But instead of taking possession of the allotted unit and avoiding payment of the amount due as agreed upon while executing the Apartment Buyer Agreement, she filed this complaint which is nothing but an abuse of the process of law and a ploy to wriggle out of the contractual obligations.

5. All other averments made in the complaint were denied in toto.

6. To decide the rival pleas taken by both the parties, the following issues arise for consideration:

Shree
2/2/2021

- (i) Whether the respondent/developer violated the terms and condition of the Apartment Buyer Agreement?
- (ii) Whether there was any reasonable justification for delay in offering the possession of the allotted unit?
- (iii) Whether the claimant is entitled for refund of the paid-up amount besides interest and other charges.

7. I have heard the learned counsel for both the parties and have also perused the written submissions made on their behalf.

8. Admitted facts of the case are that in August, 2011, the complainant booked a residential unit bearing No.T2-3303, measuring 2625 sq ft. in its project known as "Primanti" in Sector 72, Gurugram for a total sum of Rs.2,28,65,625/- by paying a sum of Rs.14,00,000/-. A sum of Rs. 2,16,29,218/- was paid by her in total to the respondent company upto the year 2015 i.e. 90% of the total cost of the allotted unit. There was upgradation of that unit at two times. It is proved from the record that the offers in this regard were made by the respondent rather the complainant. Ultimately, the unit in question bearing No.EF26-A, measuring 4250 sq ft was allotted to the complainant by the respondent for a total sum of Rs.3,88,11,000/- and possession of the same was to be offered to her by 31.08.2018 as per terms and conditions of Apartment Buyer Agreement Annexure B dated 20.01.2017. It is the case of the complainant that the respondent company failed to offer possession of the allotted unit to her by the due date. So after the passage of that period, she is not interested in taking possession of that unit and is entitled to seek refund of the paid up amount besides interest and compensation. In this regard, besides referring to written submissions filed by her, reliance has also been placed on documents(emails) Annexure A-1 to A-7, Annexure B-1 to Annexure B-12. A perusal of these documents shows that it was in fact, the respondent

See - 2/2/2021

Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725 and followed in **Wg Cdr. Ariful Rahman Khan & Others Vs DLF Southern Homes Pvt Ltd. 2020, SCC online SC 667**, it was held by the Hon'ble Apex Court of the land that when the respondent/builder fails to complete the project in time and deliver the possession of the allotted unit to the complainant as per allotment letter or the apartment buyer agreement, then the allottee has a right to ask for refund if the possession is inordinately delayed. Then in case of **DLF Universal Ltd & Anr Vs Capital Greens Flat Buyers Association** etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020, it was observed by the Hon'ble Apex Court of the land that delay in approval of building plans and issuance of stop work orders as a result of fatal accidents during the course of construction being force majeure conditions cannot be taken into consideration in achieving timely completion of contractual obligations. Even, there was also an exit offer given to the flat-buyers on two occasions by the builder and which also resulted in delay in completing the project. So all these circumstances were not considered sufficient for invoking *force majeure* conditions and resulted in payment of delayed possession charges to the allottees by the builder. Then in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, the Hon'ble Apex Court allowed the refund of the amount deposited by the allottees with the developer besides interest at the rate of 9% p.a. when it was proved that there was delay in handing over the possession of the allotted unit. So, in such a situation, the respondent-promoter cannot seek to bind the complainant with one sided contractual obligations nor can ask her to wait for an offer of possession indefinitely after the due date has expired.

10. Faced with this situation, it is contended on behalf of the respondent that after receipt of occupation certificate on 25.01.2020, the

Shree c e f
2/2/2021

complainant was offered possession of the allotted unit on 14.02.2020 vide Annexure B(Page 30) alongwith photographs Annexure C(Page 34 to 55). Though, she raised some concerns about completion of construction and finishing of the allotted unit but these were to be rectified upon receipt of full payment by the respondent. Secondly, even the respondent vide its emails dated 11.10.2018 and 12.10.2018 informed the complainant with regard to payment of delayed compensation as per agreement/RERA norms. After calculating that delay, the respondent vide its email dated 25.02.2020 informed the complainant of compensation at the rate of 10.2% p.a. on the amount paid and credited a sum of Rs.20,88,556/- in her account. So after adjusting that amount, the complainant was liable to pay the remaining amount towards the allotment of upgraded/allotted unit and take its possession from the respondent. But again the plea advanced in this regard is devoid of merit. No doubt, the respondent-company credited a sum of Rs.20,88,556/- in the account of the complainant but whether she is bound by the unilateral terms and conditions embodied in Apartment Buyer Agreement dated 20.01.2017. The answer is in the negative. In cases of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan , Wg Cdr Ariful Rahman Khan & Ors Vs DLF Southern Homes and Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others(supra) and Neel Kamal Suburban Realtors Pvt Ltd. & Anr Vs Union of India & Ors 2018(1) (Civil) 298(DB)**, it was observed that provisions of the Act of 2016 are retroactive in operation and the agreement entered into with individual purchasers are invariably one sided, standard format agreements prepared by the builders/developers and which are overwhelmingly in their favour with unjustified clauses on delayed delivery time for convenience to the society/obligations to obtain occupation/completion certificate etc.

Individual purchasers had no scope or power to negotiate and had to accept

Shree 2/2/2021

one sided agreements. The terms of the agreement authored by the developer do not maintain a level platform between the developer and the flat purchaser. The stringent terms imposed on the flat purchaser are not in consonance with the obligations of the Developer to meet the timelines for construction and handing over possession and do not reflect an even bargain. The failure of the Developer to comply with the contractual stipulated period would amount to a deficiency of service. The incorporation of one sided and unreasonable clauses in the Apartment Buyer Agreement constitutes an unfair trade practices and the developer cannot compel the apartment buyer to be bound by the one sided contractual terms contained in the Apartment Buyer Agreement. So, the plea of the respondent that the allottee is bound to take possession of the allotted unit and pay the remaining amount to it is untenable.

11. Thus, in view of discussion above, it is proved that the respondent-developer violated the terms and conditions of Apartment Buyer Agreement dated 20.01.2017 and failed to complete the construction and offer possession of the allotted unit to the complainant by the due date without any justification. So, findings on both these issues are returned accordingly.

12. So, in view my discussion above and taking into consideration all the material facts brought on the record by both the parties, it is held that the claimant is entitled for refund of the amount deposited with the respondent-company besides interest. Consequently, the following directions are hereby ordered to be issued to the respondent:

- i) To refund the entire amount of Rs.2,16,29,198/- besides interest at the prescribed rate i.e. 9.3% p.a. from the date of each payment till the date on which the full refund alongwith

Shlc - 40
21/2/2021

compensation in the form of interest in terms of this order is paid to the complainant

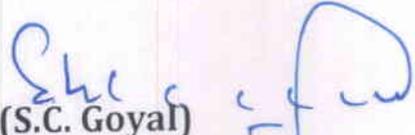
ii) The respondent shall also pay a sum of Rs.1,00,000/- inclusive of litigation charges as compensation to the complainant

13. The payments in terms of this order shall be made by the respondent-company to the complainant within a period of 90 days from today.

14. Hence, in view of my discussion detailed above, the complaint filed by the complainant against the respondent-company is ordered to be disposed off accordingly.

15. File be consigned to the Registry.

02.02.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority
Gurugram
2-2-2021