



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 21.09.2021
Complaint No.	CR/2181/2019/Case titled Sidhartha Katwar and anr VS Orris Infrastructure Private Limited and anr.
Complainant	Sidhartha Kastwar and Arnika Kastwar
Represented through	Jitin Jaiswal, Adv
Respondent No. 1	Orris Infrastructure Private Limited
Respondent No. 1 Represented through	Ms. Charu Rustagi Adv,
Respondent No. 2	Three C Shelters Pvt. Ltd.
Respondent No. 2 Represented through	None
Last date of hearing	
Proceeding Recorded by	S.L. Chanana

Proceedings

1. This is complaint filed by Sidhartha Kastwar and Arnika Kastwar (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/developers.

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A.O.

21-9-21



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2. As per complainants, ~~one~~, they jointly purchased a flat in respondent's project **Greenopolis**, situated at sector-89, Gurugram. The unit was originally booked by Rohit Jagnani on 30.07.2012, who sold it to Jyoti Anand on 3.11.2012. The said unit was transferred in the name of complainants vide endorsement dated 29.04.2014. The respondent confirmed the nomination of unit in favour of complainants vide letter dated 29.04.2014.. The respondent vide allotment letter dated 25.08.2012 allotted a unit No. 304 admeasuring 1660 sq. ft. for a total consideration of Rs 85,50,800 including BSP, PLC, EDC and etc. A buyer's agreement was executed on 23.09.2013.
3. As per the Clause 5.1 of buyer's agreement, the possession of the said premisses was to be delivered by the developer to the allottee within 36 months from the date of allotment letter, with grace period of 6 months. The respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. As per the payment plan opted by the complainants, they made timely payment of Rs 76,71,644/- i.e 90 % of entire agreed consideration along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement. The complainants have visited the respondents and has even



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approached them through various telephone calls and letters but respondent failed to give any update of the status of construction work.

5. The respondent has committed gross violation of the provisions of section 18(1) of the Act, and hence complainants opted to file present complaint, seeking refund of entire amount of Rs 76,71,644.

6. The respondent no. 1 filed a written reply. It is contended that ^{same} (respondent^{No. 1} is only landowner and license holder for the project land, whereas it is respondent no. 2, which is developer of project in question. The respondent no. 2 is solely responsible for carrying out construction in the project and any delay is attributable to respondent no. 2 only. The answering respondent cannot be held liable for any delay or compensation for such delay. As per the agreement between complainants and respondents, respondent no. 2 has to construct and deliver the flat and complainants are bound to make payments. The complainants must have made payments towards the allotted project only after making the due inspection since they have opted for construction linked payment plan.

7. Moreover, in complaint no. 225 of 2018 before Haryana Real Estate Regulatory Authority, Gurgaon, titled as **Greenopolis Welfare Association v Oriss Infrastructure and Anr**, the authorised representative of respondent no. 2, Mr. Ravi Bhargav, has admitted its



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responsibility of developing and constructing the said project by way of an affidavit dated 23.01.2019 (Annexure R2). The project is closely monitored by HARERA and authority vide its order dated 23.01.2019 has even appointed a Commissioner Investigation and Monitoring Officer and an Engineer. All the payments from escrow account is also being monitored by the authority. The authority in its order had observed that granting the relief of refund to the allottees would adversely affect the progress of the project.

8. Insolvency proceedings ^{has} been initiated against respondent no. 2 and IRP has been appointed vide NCLT order dated 16.10.2020 in the matter of **M/s Staigh Edge Contracts Pvt. Ltd v Three C Shelters Pvt. Ltd.** The complainants to that effect has already filed their claims before CIRP for an amount of Rs 1,14,54,385 and same has been provisionally accepted as per the date updated till 23.02.2021.

9. According to BBA, reached between parties, it is respondent no. 2 who has responsibility to develop the project in question. As per agreement it was respondent no. 2 ^{who} ^{-or} ^{was liable for} to receive payment and delivery of possession. Respondent no. 1 is stated to be landowner only. In these circumstances, only respondent no. 2 can be designated as developer in view of Act of 2016. Complainant has no right to claim refund from respondent no. 1



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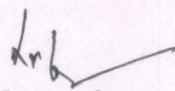
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10. It is further admitted by Id. Counsel for complainants that insolvency proceedings are still pending before Insolvency and Bankruptcy Board and IRP has been appointed, ^{and} moratorium is still in existence. Considering all these circumstances, in my opinion this case is liable to be stayed sine die ^{ie} till the matter is decided by Insolvency and Bankruptcy Board.

11. Moreover, as claimed by respondent no. 1 and not denied by counsel for complainants, they (complainants) have already approached Insolvency and Bankruptcy Board and have put their claim of recovery. Complainants are free to file application for restoration ^{of complaint in hands} in view of any order, passed by Insolvency and Bankruptcy Board/^{ACLT} File be consigned to registry.


(Rajender Kumar)
Adjudicating Officer
21.09.2021