



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 RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 6681/2019
Date of Decision : 22.09.2021

Paramveer Singh S/o Tosh Kumar
R/o H.No.552, Sector-10
Gurugram-122001

Mrs Shashi Raghav W/o Shri Paramveer Singh
R/o H.No.552, Sector-10
Gurugram-122001

Complainants

V/s

M/s Bright Buildtech Pvt Ltd. & Ors
D-107, Panchsheel Enclave,
New Delhi-110017

Mr. Dheeraj Kumar
D-107, Panchsheel Enclave,
New Delhi-110017

Mr. Ravi Jain
D-107, Panchsheel Enclave,
New Delhi-110017

Mr. Prabal Pratap
D-107, Panchsheel Enclave,
New Delhi-110017

Respondents

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A.O.

22-9-21

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

Present:

For Complainants:

Mr. Suresh Dutt Kaushik , Advocate


For Respondents:

Mr. Vijay Nair , Advocate

ORDER

This is a complaint filed by Shri Paramveer Singh and Smt. Rashi Raghav, (also referred as buyers) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief 'The Act') read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 against M/s Bright Builtech Pvt Ltd.(also called as promoters) seeking, directions to refund a sum of Rs.25,40,966/- alongwith compensation, as per section 18 and Rs.1,00,000/- towards litigation charges.

2. According to complainants, after going through advertisement published in various newspapers given by the respondent and brochure/prospectus provided by them, they (complainants) booked a residential unit bearing No.C87-UGF measuring 1415 sq. ft in the project 'Woodview Residences' situated in Sector 89 and 90, Gurugram for basic sale price of Rs.1,40,17,572.93p. Initial booking amount of Rs.8,00,000/- was paid on 16.12.2016. Acknowledging the receipt of this sum, the respondents issued Letter of Allotment dated 23.01.2017. Another sum of Rs.5,74,764/- was paid by them on 03.07.2017. Upto 27.04.2017, they had paid total amount of Rs.25,40,996/-to the respondents.


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3. On receipt of aforesaid amounts, amount, respondent sent two unsigned copies of Builder Buyer's Agreement, for execution. In column No.3.2(C) the respondents had demanded Rs.4,47,862/-towards EDI and IDC, Rs.20,000/- as PBC and Rs.1,50,000/- for membership fee of club. In addition to these charges, respondents added cost of additional devices including EDC, labour cess, service tax, WCT, VAT, electric sub-station, operation of generator sets, fire-fighting equipments, which were payable by the buyer, on demand at the time of possession. In clause 4.6 of terms and conditions, respondents mentioned that in case of default on the part of complainant, 10% of basic sale price of unit in question shall be forfeited. All this was not disclosed at the time of booking. In addition to this, several other terms and conditions of Agreement were not disclosed at the time of booking.

3. Despite, receipt of Rs. 25,40,996/-, in the very first year of booking, respondents failed to start construction. When they asked the respondents to change unilateral terms and conditions of agreement, same(respondents) refused to budge and even threatened to forfeit all the amount paid by them, in case, they(complainants) do not sign BBA. Further, when they visited project, they were shocked to see that construction work was not going on, as per schedule. The officials of respondents failed to give any satisfactory response, as when the project will be completed.

4. All this compelled them (complainants) to withdraw from the project and they requested respondents to refund amount paid by them so far and also to compensate them. Failing to get positive response from the respondent, they are forced to approach this forum, seek directions against the respondents to refund their money, with interest and compensation under the provisions of Section 18 of the Act.

4. Details of the complainants' case in tabular form is reproduced as under:

Project related details		
I.	Name of the project	"Woodview Residences"
II.	Location of the project	Sector 89 & 90, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	C87-UGF
V.	Tower No. / Block No.	-
VI	Size of the unit (super area)	Measuring 1415 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)	16.12.2016
XI	Date of Allotment	23.07.2017
XII	Date of execution of BBA (copy of BBA be enclosed)	NIL
XIII	Due date of possession as per BBA	Within 36 months from the date of booking
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause	


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Payment details		
XVI	Total sale consideration	R.1,40,17,572.93p.
XVII	Total amount paid by the complainants	Rs.25,40,966/-

5. Despite service pf notice and affording several opportunities, respondents failed to file written reply and thus their defence was struck off, vide order dated 23.08.2021. Written submissions were filed by the respondents on 20.09.2021.

6. I have heard the learned counsels for parties and perused the documents on file.

7. It is averred in written agreements and re-asserted by learned counsel for respondents. that respondent No.1 is engaged in the business of construction and development of real estate projects, including the one in question Respondent No. 2 to 4 are not necessary and proper parties, as such their names be dropped from the array of parties since they have no contractual obligations or liability towards the complainants.

8 It is further contended that there is no delay on the part of respondent No.1 and same is eligible for extension of time due to various reasons such as 'force majeure' circumstances. Respondent cited various orders/authority of different constitutional bodies such as National Green Tribunal, Environment Pollution(Prevention and Control Authority), Supreme Court and ultimately the lockdown imposed in the country, which according to them, consumed about 37 weeks.

6. The demand of complainants to seek refund is claimed by respondents as baseless. According to same, if is allowed, it will adversely affect the

interests of other allottees, who are still interested to get possession of their dream homes. As per respondents, construction work of project is in progress and project is almost 70% complete. Even otherwise as per 'Buyers Agreement', possession of allotted unit is to be given by virtue of Clause 5.1 and 5.2 of Agreement and time for handing over possession of unit has not even expired. Learned Authority in its various orders has opined that where 50% work of project is complete, to safeguard the interests of other allottees, no refund should be allowed. Moreover, the complainants too were in default in making timely payments, which adversely affected the progress of construction work.

7. As stated earlier, despite service of notice and affording several opportunities, respondents did not file any reply and hence their defence was struck off. Even if counsel for respondents was allowed to argue or to file written arguments, defence taken by same is liable to be ignored.

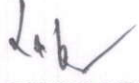
8. As claimed by complainants and not denied on behalf of respondents that draft of 'agreement' was not signed by complainants alleging that terms mentioned therein were never agreed by them. When no such agreement was concluded, none from parties was bound by that draft. There is nothing to infer that parties had reached some oral agreement. Even if some allotment letter was issued by respondents in the absence of agreement of terms and conditions of sale, same had no value. Receipts of payments, as claimed by complainants are not denied on behalf of respondents. In these circumstances, when complainants demanded for refund, respondents had no right to retain their amounts.

9. On the basis of above discussion, complaint in hands is allowed. The respondents are directed to refund amount received from complainants i.e. Rs.25,40,966/- to them (complainants) within 90 days from the date of this order

alongwith interest @ 9.3% p.a. from the date when complainants asked for refund till realisation of amount. The respondents are burdened with cost of Rs.1,00,000/- towards litigation expenses etc. to be paid to the complainants.

10. File be consigned to the Registry.

22.09.2021


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 06.10.2021.