

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

**Complaint no. : 4997 of 2019**

**Date of decision : 14.10.2021**

SP GUPTA AND  
SUNITA GUPTA  
R/O : 34 T, Sector-7,  
Jasola Vihar,  
New Delhi-110025

**Complainants**

**Versus**

MVN INFRASTRUCTURES PVT. LTD.  
ADDRESS : 58 A/1, Kalu Sarai  
New Delhi

**Respondent**


**APPEARANCE:**

For Complainants:

Col. Raj Vijay Rohlania --  
Advocate

For Respondent:

Sandeep Kumar-Advocate

  
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**ORDER**

1. This is a complaint filed by S.P. Gupta and Sunita Gupta (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 respondent/developer.
2. As per complainants, on 05.10.2014, they jointly booked a flat in project "**MVN ATHENS SOHNA**", situated at sector-5, Sohna, Gurugram and paid Rs 89,360 as booking amount. The respondent vide email dated 09.02.2015 informed complainants that in draw of lots held on 04.02.2015, they (complainants) have been allotted Flat No. B4-901 admeasuring 485.2734 sq. ft (carpet area) for a total consideration of Rs 17,87,236 including BSP, EDC, IDC etc. A buyer's agreement was executed between parties on 17.02.2015, followed by addendum to buyer's agreement dated 26.11.2016, whereby unit allotted to complainants and its size <sup>were</sup> ~~was~~ changed.
3. As per the Clause 3.1 of buyer's agreement, the possession of the unit was proposed to be delivered within 4 years from the

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date of approval of building plan or grant of environment clearance, whichever is later, with grace period of 6 months.

4. As per the payment plan opted by the complainants, they made timely payment of Rs 18,52,794 i.e. more than the agreed consideration, along with miscellaneous and additional charges etc, but to their utter dismay the possession of the apartment has not been delivered in finished manner as agreed in buyer's agreement.
5. The respondent changed the building plan which was earlier approved on 05.09.2014. The respondent vide its letter dated 12.01.2016, sought objections to revised building plans from complainant. DTCP approved revised building plans on 16.05.2016, even though complainant had objected to said revised building plan.
6. The respondent vide its letter dated 07.06.2019, offered possession of the unit and claimed that occupation certificate has been received for Phase-I of the project, though no occupation certificate was shown to allottees. The respondent raised demand of Rs 76,406 with said letter.
7. They visited the site to inspect the flat and noticed that there was no electricity from DHBVNL. The occupants are being

supplied electricity through captive Diesel Generators, cost of which is recurring and is prohibitively high. So-called completed part of project does not have authorised water supply connection and water is being supplied to the occupants through unauthorised borewell. The complainants vide their email dated 23.06.2019, sought clarifications from respondents, on these issues.

8. They (complainants) visited the site again on 29.06.2019 to take over possession but respondent refused to hand over possession to them. The respondent issued legal notice dated 07.09.2019 alleging that complainant has damaged its reputation. The complainant replied said notice on 22.09.2019. The respondent raised demand towards the maintenance charges which is arbitrary.
9. The respondent vide its letter dated 21.10.2019 cancelled the allotment on the pretext that possession has not been taken by complainants and vide reply to legal notice dated 22.09.2019, complainants have shown their desire to surrender said unit.



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10. In this way, complainants are forced to file present complaint, seeking refund of entire amount of Rs 18,52,794 along with interest at prevailing rate for every month of delay.

11. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	<b>"MVN ATHENS SOHNA"</b> , situated at sector-5, Sohna, Gurugram
2.	Project area	6.50625 acres
3.	Nature of the project	Residential Colony (Affordable Housing Scheme)
4.	DTCP license no. and validity status	49 of 2014 dated 18.06.2014 valid up to 15.05.2020
5.	Name of licensee	M/s MVN Infrastructure Pvt. Ltd.
6.	RERA Registration	Registration No. 284 of 2017 dated 10.10.2017
<b>UNIT DETAILS</b>		
1.	Unit no. (original unit)	B4-901
2.	Carpet area	485.2734 sq. ft.

  
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3.	Unit No. (new unit)	8- 1406
4.	Carpet area (new unit)	478.212
5.	Date of Booking	05.10.2014
6.	Date of Buyer's Agreement	17.02.2015
7.	Addendum to Buyer's agreement	26.11.2016
8.	Due Date of Delivery of Possession  As per Clause No. 9.1: The possession of the said premises is proposed to be delivered within 4 years from the date of approval of building plans or grant of environment clearance whichever is later with grace period of 6 month.	05.09.2018
9.	Building Plan approval	05.09.2014
10.	Revised Building Plan	16.05.2016
11.	Offer of Possession	07.06.2019
12.	Termination Notice	21.10.2019
<b>PAYMENT DETAILS</b>		
13.	Total sale consideration	Rs 17,55,179
14.	Amount paid by the complainants	Rs 18,52,794

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15.	Payment Plan	Time-linked
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12. The respondent contested the claim by filing reply dated 16.01.2020. It is contended that two HT lines were running through the project and to change alignment of these lines, respondent approached HVPNL. Same (respondent) further approached Hon'ble Punjab and Haryana High Court by filing a Civil Writ Petition No. 18929 of 2014, DTCP had also filed a reply in that matter acknowledging the fact that HT wires would affect the project. Said writ petition was disposed off vide order dated 26.07.2017 with a direction to respondent to make representation before DTCP.

13. The respondent requested for revision of building plans due to said HT wires. The revised building plans were approved on 16.05.2016. The respondent in compliance of order of Hon'ble High Court made representation before DTCP. The DTCP vide its order dated 13.09.2018, agreed to treat period from September 5, 2014 to May 16, 2016 as zero period, for commencement of project and grant of license. As per said order date of commencement of project shall be May 16, 2016.

*Ans.*

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The project was required to be completed on or before May 15, 2020.

14. As per revised plan, parties executed an addendum to buyer's agreement dated 26.11.2016. As per said addendum, complainants accepted the revised building plan and also allotment of new unit No. 1404, 14<sup>th</sup> floor, tower-8. Subsequently, complainants requested for change of unit and the said request was accepted by the respondent. New unit allotted to complainants is flat no. 1406, 14<sup>th</sup> floor, Tower-8.

15. The occupation certificate for phase – 1 of the project i.e for the towers 5-10, which includes the tower in which unit of complainants is situated has been granted on May 29, 2019. The possessor has been offered to complainants on 07.06.2019 but complainants failed to take possession of the unit.

16. The complainants have spread rumours and misinformation about the project. The respondent served legal notice dated 07.09.2019 upon complainants, followed by a civil suit for defamation i.e. **CS DJ/878/2019 titled as MVN Infrastructures Pvt. Ltd v Satya Prakash Gupta. Ld. ADJ** vide order dated 22.10.2019, restrained complainants from



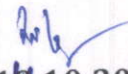
making any defamatory or damaging statement against the respondent or its project.


17. The complainants in their reply dated 22.09.2019, to legal notice dated 07.09.2019, expressed their desire to leave the project. Accordingly, respondent accepted the request of complainants and issued termination notice 21.10.2019.
18. The respondent is ready to refund amount as per Affordable Housing Policy, amended through notification dated 05.07.2019 and agreement executed between parties.
19. Contending all this, respondent prayed for dismissal of complaint.
20. The facts that complainants were allotted unit i.e. flat no. B 4-901 measuring 485.2734 sq. ft. in project developed by respondent, the former paid Rs 18,52,794 against total sale consideration of Rs 17,87,236 and respondent agreed to handover possession within 4 years of date of approval of plans or grant of environmental clearance, whichever is later with grace period of 6 months, and possession was offered on 07.06.2019 are not in dispute. The claim of complainant<sup>is</sup> that respondent changed unit and its size which was objected by complainants <sup>is</sup> are also not denied by respondent the

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respondent could not change unit or size of unit of complainant without their consent. Further, there is no evidence to show as when environment clearance was granted to project in question. Taking the date of sanction of building plan i.e. 05.09.2014 as date to start limitation, due date for possession comes to 05.09.2018. <sup>if</sup> even building plans were revised and approved later on, same does not grant authority to set another date, as due date for handing over possession. As sated earlier, respondent offered possession on 07.06.2019 i.e. after about nine months of due date.

- 216.** On the reasons stated above, complainants are well within their rights to claim refund of amount paid by them. complaint in hands is allowed and respondent is directed to refund entire amount paid by complainants i.e. Rs 18,52,794 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A cost of Rs 50,000 is also imposed upon respondent to be paid to complainants.

  
**19.10.2021**

  
**(RAJENDER KUMAR)**  
**Adjudicating Officer**

**Haryana Real Estate Regulatory Authority**

*Gurugram, Haryana.*