

**HARERA**  
**GURUGRAM**

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

**Complaint no. : 180 of 2023**  
**Date of order : 22.09.2023**

Suchi Aggarwal and  
Rohit Aggarwal

ADDRESS: H.no. 2201, Tower IV, Planet Godrej,  
K.K.Marg, Saat Rasta, Mahalaxmi East, Mumbai.

**Complainants**

Versus

Haamid Real Estates Private Limited  
ADDRESS: The Masterpiece, Sector 54, Golf  
Course Road, Gurugram.

**Respondent**

**APPEARANCE:**

For Complainants:

Mr. Abhishek Yadav Advocate

For Respondent:

Mr. Dhruv Rohatgi Advocate

**ORDER**

1. This is a complaint filed by Suchi Aggarwal and Rohit Aggarwal under section 31 read with section 72 of The Real Estate (Regulation and Development) Act, 2016 against Haamid Real Estates Private Limited.
2. As per complainants, respondent lured them to buy flat in a project called "The Peaceful Homes" located at sector 70A,

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Gurugram against which they paid first installment of Rs.10,00,000/- on 29.01.2012 with objective to shift from Mumbai to Gurgaon for better job opportunity. At the time of application, they(complainants) were inclined to invest in 2BHK flat but the respondent company's official lured them to invest in 4BHK. After depositing Rs. 47,29,600/- allotment letter dated 10.06.2013 was issued to them for 4 BHK Flat no. A174 which they did not accept.

3. As per clause 11(a) of BBA executed on 01.05.2014, respondent ought to have hand over the possession within 36 months, but till date the project is still under construction. After The Real Estate (Regulation And Development) Act, 2016, came into effect on 1st May, 2017, respondent was ought to get the project registered within 3 months under Act of 2016 but the respondent got the registration after more than 3 years i.e. on 22.10.2019 i.e. only when a complaint was filed by them(complainants) before the Authority.
4. Respondent told that they would help them(complainants) in availing loan of Rs. 1 Crore from HDFC bank but when loan was not sanctioned, respondent started threatening them to arrange finances, else respondent would forfeit the amount paid by them. In order to clear the matter, they met with officials of the company(respondent) on 26.05.2015 It was mutually agreed that either respondent would refund the entire amount received against the unit/flat in the project in question or they(complainants) would opt for 2 BHK Flat/Unit in the same project. Accordingly, complainants vide E-mail

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# HARERA GURUGRAM

dated 28.05.2015 requested for refund however, showed interest in 2BHK.

5. They(complainants) visited the office of respondent at Gurgaon on 13.08.2015 to seek refund or in alternative to request for allotment of 2 BHK flat in the said project but despite allotting 2 BHK, 3 BHK flat was allotted to them on the pretext that 2 BHK units were unavailable. Re- allotment letter dated 13.08.2015 of 3 BHK Flat no. B232 in Tower B on 23rd Floor in the said project admeasuring 2150 sq. ft. super area was issued by respondent. A Flat Buyer Agreement was executed on 19.08.2015 for the same, after payment of Rs.20,00,000/- on 17.08.2015.
6. Many emails were exchanged, demanding payments by respondent and for completing paper work and construction by complainants. They(complainants) were under immense pressure to arrange for finance as HDFC refused to sanction loan for the project which is not RERA registered and builder had not obtained occupation certificate. Despite the fact that project is far from completion, respondent raised demand of Rs 69,05,918/- on 08.01.2019, to be paid within 10 days otherwise allotment will be terminated. Till date they paid Rs.67,29,600/- which is 60 % of the total sale consideration.
7. Respondent got License No. 16 of 2009 dated 29.05.2009 from DTCP for setting up a Group Housing Colony on land measuring 27.4713 acres falling in Sector 70A, Gurgaon which was further renewed on 31.05.2013. It was valid upto 28.05.2015. As per Clause 11(a) of Flat Buyer agreement, respondent company was supposed to hand over the



possession of the unit/flat to the complainants within a period of 36 months from the date of commencement of construction of the project. Compensation for delay of every month is to be paid as per clause 14 of FBA.

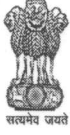
8. Respondent had not registered its project with the concerned authority within the stipulated time period as prescribed under Section 3 of the Act of 2016.

9. In complaint no. 739/2019 vide order dated 29.07.2022, the Authority directed the promoter to return the amount received by complainants i.e. Rs.67,29,600/-with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Real Estate(Regulation and Development) Rules, 2017.

Citing all this, complainants have sought following reliefs:

- a. To order the respondent to pay compensation of Rs. 20,00,000/- on account of mental agony, torture and harassment suffered by the complainants.
- b. To order compensation of Rs.10,00,000/- to complainants for loss/damage sustained due to incorrect statement in the advertisement. Prospectus, brochure in terms of Section 12 of the RERA Act,2016.

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c. To award Rs.20,00,000/- as compensation to complainants for deficiency of service on part of respondent.

Respondent contested the complaint by filling written reply. It is averred by the respondent :-

10. That complainant's allotment has been cancelled once on 29.07.2015 due to the failure to comply with the obligations of the Buyer's Agreement by the complainants. Thereafter, complainants again approached the respondent for allotment of the new unit and new Flat Buyer Agreement was signed on 19.10.2015.
11. That respondent is a wholly owned subsidiary of the Advance India Projects Limited. The project in question is registered with the Hon'ble Authority vide registration number 63 of 2019 dated 22.10.2019 declaring the respondent as the promoter/license Holder of the project.
12. That complainants booked and applied for unit no A-174, 17<sup>th</sup> Floor, Tower-A admeasuring 2925 sq. ft(old unit) in the said project on 06.10.2012 and Allotment letter dated 10.06.2013 was issued to complainants.
13. That said project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from all allottees on 13.06.2014 but complainants did not reply to it. Respondent approached complainants to get the Buyer's Agreement and

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- other relevant documents executed but the said process was prolonged, at the behest of the complainants.
14. That complainants failed to abide by the terms and conditions of the application form and defaulted in remitting timely installments. Despite sending continuous reminders, complainants did not clear the dues. Final notice dated 12.01.2015 and cancellation letter dated 29.07.2015 were sent to complainants terminating the old unit
15. That after some time, complainants requested respondent to allot a new unit of a lesser size as compared to the old unit and to adjust the amount already paid for the old unit. On 13.08.2015 allotment letter was executed for unit no. B-232, 23<sup>rd</sup> Floor, Tower-B admeasuring 2150 sq. ft. in the said project and fresh Flat Buyer Agreement was executed on 19.10.2015. Complainants opted for construction linked payment plan. As is evident from the Payment Plan (Annexure V) of the Agreement, the total cost of the Unit (exclusive of the stamp duty and other charges) is Rs. 1,56,11,200/-. Clause 21, 33(a), 35 and 5 of FBA are pointed and clarified by the respondent.
16. That unforeseeable events mentioned below, beyond the control of respondent led to the delay in completion of the project, due to the following reasons:
- a. More than 60% of the allottees to the instant project have defaulted in their payments, leading to unrealized amount of more than Rs 150 Crores as on date in the Project. Due to defaults on part of the allottees, the Respondent was constrained to approach Financial

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Institutions to raise funds to complete the construction of the Project.

- b. Dispute arose with civil Contractor viz. Shri Balaji Buildmate Private Limited which did not allow any other contractor too to carry on with the construction work. A police complaint was also filed by the respondent against the aforesaid civil contractor. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders Private Limited was awarded the work. The new contractor thereafter took further time to mobilize its resources and to deploy its personnel's and to carry forward the work from the previous contractor.
- c. Unfortunately, there was a major accident at the project site which resulted in the untimely death of two labourers and three labourers were hospitalized. Labour union started making various demands, settlement all of which further took considerable time and resulted in delay in completion of the project.
- d. Due to demonetization, labour crisis and various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period, which further affected the timely completion of the said project.

17. That respondent applied for Occupation Certificate on 18.03.2019 and OC was issued on 29.10.2019. Thereafter,



letter of possession was given to complainants on 13.03.2020. Various reminders for possession of unit and payment of balance amount were sent by respondent but complainants refrained from obtaining possession due to inadequate funds and preferred to file complaint with authority. Authority had disposed complaint no. 739-2019 vide order dated 29.07.2022 and directed respondent to refund the principle amount paid by the complainants along with interest. The complainants have filled execution petition no.390-2023.

18. The respondent requested for dismissal of complaint.

I heard learned counsels representing both of the parties and went through record on file.

19. It is not in dispute that present complainants filed a complaint no. 739/2019 before Haryana Real Estate Regulatory Authority, Gurugram (in brief Authority) and same has been decided on 29.07.2022. The Authority found that respondent did not complete the construction of project/ unit in question and hence is liable to refund amount of the complainant in view of section 18(1) of the Act of 2016. It is noted by the Authority that although the respondent/builder obtained OC dated 29.10.2019, but same does not relate to the tower, where unit allotted to the complainants is situated. Even if the respondent claims to have offered possession of the unit to the complainants on 13.03.2020, when neither the project /unit was complete nor

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OC was received, in such a circumstance, there is no meaning of such offer of possession. The latter unit is stated to have been allotted in favour of complainants on 13.08.2015. As per BBA, respondent was obliged to complete the construction and to hand over possession of said unit within a period of 36 months of agreement. According to complainants, they paid first installment of Rs.10,00,000/- on 29.01.2012. After depositing total of Rs.47,29,600/-, allotment letter dated 10.06.2013 was issued to them for 4BHK flat(old flat unit). Latter unit i.e. 3BHK flat is stated to have been allotted, when complainants paid Rs.20 Lakhs on 17.08.2015. According to complainants, till filling of present complaint, they had already paid a sum of Rs.67,29,600/- which is about 60% of total sale consideration. In this way, the respondent/ builder used money paid by the complainants and failed to fulfil its obligation. Apparently, all this caused undue enrichment to the respondent and mental harassment, torture and agony to the complainants. Complainants are thus entitled for compensation in this regard.

20. As mentioned above, the complainants have claimed, a sum of Rs.20 Lakhs on account of mental agony, torture and harassment. It appears to be excessive. Keeping in view facts and circumstances of the case, complainants are awarded a compensation of Rs.5 Lakhs for mental agony, torture and harassment to be paid by the respondent.
21. Although complainants have claimed Rs.10 Lakhs as compensation for loss/ damage sustained by them, due to incorrect statement/ advertisements etc. Complainants did

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not adduce any evidence to prove as due to what advertisement/ statement they suffered losses. No compensation can be awarded in this regard.


22. When Authority had already allowed refund of the amount paid by the complainants, no reason to award separate compensation in the name of deficiency of service. Request in this regard is also declined.

23. Although complainants have not filed any receipt / certificate about fees paid by them to their counsel, apparently, they were represented by an advocate during proceedings of this case. Same are awarded a sum of Rs.50,000/- as cost of litigation to be paid by respondent.

24. Complaint in hands is thus disposed of. Respondent is directed to pay amounts of compensation as described above, within 90 days of this order, otherwise same will be liable to pay said amounts along with interest @10.5% p.a. till realisation of amounts.

25. Announce in open court today.

26. File be consigned to records.

  
**(Rajender Kumar)**  
**Adjudicating Officer,**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**