

RECTIFICATION ORDER DATED 13.12.2019

In Complaint Case No.288/2018

Present: None

Case file taken up today on an application moved by the complainants.

It is pleaded while dictating order, there is clerical mistake in Para-1 under the heading due date of possession as BBA as well as in Para-2 being 15.11.2016 and 22.20.2012 instead of 29.04.2016 and 22.10.2012 respectively.

File has been summoned and record has been checked. So, in view of record, the due date of possession comes to 29.04.2016 instead of 15.11.2016. Secondly, there is typographical mistake while showing payment of Rs.10,36,997/- on 22.10.2012. So, the same are ordered to be corrected accordingly in the original order.

File be consigned to the Registry.

(S. C. GOYAL)

ADJUDICATING OFFICER

HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM. 24-12-2019



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

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

Complaint No. : 288/2018
Date of Decision : 13.12.2019

Rishi Kumar Khanna & Gaurav Khanna both
R/o A-4, Kallol Apartments, 35, I P Extension,
Delhi-110092

Complainants

V/s

- (1) M/s Sare Gurugram Pvt Ltd.(formerly knowns as
Ramprastha SARE Reality Pvt Ltd)
E-7/12, LGF, Malviya Nagar, New Delhi-110017
(2) Mr Vineet Relia, Managing Director
Sare Gurugram Pvt Ltd
Duet House, Plot No.46, Udyog Vihar,
Phase IV, Gurugram

Respondents

Argued by:

For Complainants

Mr. V. N. Mittal, A.R.

For Respondent

None

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 29 of the Haryana Real Estate(Regulation and

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Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by the complainants, both residents of Delhi for refund of an amount of Rs.41,78,423/- deposited with the respondents for booking of a flat/unit No.P061001, 10th floor, Tower P06 in their residential project known as Green ParC at Crescent ParC, Sector-92, Gurugram on account of violation of obligations of the promoter under section 11(4)(a) of Real Estate(Regulation and Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	PETIOLES
II.	Location of the project	Sector-92,Gurgaon, Haryana
III.	Nature of the project	Residential (construction link plan)

Unit related details		
IV.	Unit No. / Plot No.	P061001
V.	Tower No. / Block No.	Tower P06
VI	Size of the unit (super area)	2040 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	22.10.2012
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	02.07.2013
XII	Due date of possession as per BBA	15.11.2016 29-4-2016

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XIII	Delay in handing over possession till date	More than 3 years
XIV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 5.1 of BBA
Payment details		
XV	Total sale consideration	Rs.1,00,02,600/-
XVI	Total amount paid by the complainants till date	Rs. 41,78,423/-

2. It is the case of the complainants that in the year 2012, they applied for purchase of a flat in PETIOLES Green ParC at Crescent ParC, Sector-92, Gurugram, ^{and} were allotted a flat detailed above by the respondent against total payment of Rs.1,00,02,600/-. It is their case that they paid a sum of Rs.10,36,997/- on ~~22.20.2012~~ ^{22.8.2012} but later on paid different amounts totalling to Rs.41,78,423/- upto ~~12.02.2018~~ ^{Shc 24/12/14}. A BBA was executed between the parties on 02.07.2013 and as per the same, the possession of the allotted unit was to be delivered by 29.10.2015 and at most by 29.04.2016 by adding a period of six months as grace period. Later on, it was intimated to the complainants that the company changed its name to Sare Gurugram Pvt Ltd. Though the complainants had been making payments regularly but the respondent failed to fulfil the terms and conditions of BBA. There was also inordinate delay in handing over the possession of the booked unit. A number of reminders in this regard were made requesting the respondent to hand over the possession of the allotted unit to the complainants but with no result. So, on these broad averments, the complainants filed a complaint seeking refund of the amount deposited with the respondents with interest and compensation.

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3. But the case of the respondents as set up in the written reply before amendment of pleadings is that the complainants booked a flat in their project known by the name of PETIOLES and deposited different amounts and the construction of the project started in the year 2012 and the same is likely to be completed soon. It was pleaded that the complaint filed against them is not legally maintainable and the same merits dismissal. It was denied that there was any intentional delay in completion of the project and the respondents are liable to refund the deposited amount of the allottees besides interest and compensation.

4. After hearing both the parties and perusal of the case file, learned Authority vide its order dated 06.11.2018 directed the respondents to pay interest to the complainants at the prescribed rate of interest on account of delay from the due date of possession i.e. 29.04.2016 till the date of offer of possession.

5. Feeling aggrieved with the same, one of the respondent, namely, M/s Sare Gurugram Pvt Ltd. filed an appeal before the Hon'ble Appellate Tribunal who vide orders dated 20.08.2019 set-aside the order and directed this forum to adjudicate the controversy in question in accordance with law. So, in pursuant to the directions passed by the Hon'ble Appellate Tribunal, the complainants filed an amended complaint on 19.09.2019 with a copy to the other side.

6. Despite notice, none turned up on behalf of the respondents and as such, vide orders dated 13.11.2019, they were proceeded against ex-parte.

7. I have heard the AR for the complainants and also perused case file.

8. Some of the admitted facts of the case are that complainants expressed a desire to purchase a flat in the project of the respondents known by the name

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of PETIOLES. So, in pursuant to their application, they were allotted a residential flat on 22.10.2012 vide allotment letter dated 01.11.2012 for a total sale consideration of Rs.1,00,2,600/-. It is also a fact that on different times, the complainants deposited various amounts totalling of Rs.41,78,423/- upto 12.02.2018. A Flat Buyer Agreement Annexure C-7 was executed between the parties on 02.07.2013 and as per the same the possession of the allotted unit was to be delivered to the complainants latest by 29.04.2016 by adding a period of six months being the grace period. Though the complainants paid sufficient amount to the respondents in lieu of allotment of residential unit but the later failed to offer/deliver possession of the allotted unit even ^{upto} after now and which led to the former to move for refund of the amount deposited with the later. Though earlier while filing written reply, a plea was taken by the respondents that there was no intentional delay in completion of the project but after amendment of pleadings, they failed to put in appearance and which led to passing of an ex-parte proceedings. So, from the perusal of various documents Annexure C -1 to C-6, C-8 to C-12, it is evident that complainants paid a sum of Rs.41,78,423/- to the respondents. Despite the allotment being made under possession linked plan, the respondents failed to complete the construction of the project in which the complainants was allotted ^a residential unit. Even, there is nothing on record to shows that the project is likely to be completed soon and the possession of the same would offered to the complainants. So, in such a situation, they are entitled to seek refund of the amount deposited with the respondents besides interest from the date of each payment at the prescribed rate of interest i.e. 10.20%p.a.

9. Thus, in view of my discussion above, the complaint filed by the complainants is hereby ordered to be accepted. Consequently, the complainants are held entitled to refund of Rs.41,78,423/- besides interest at

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the prescribed rate i.e. 10.20%p.a. from the date of each payment till the date of actual receipt of total amount from the respondents jointly and severally

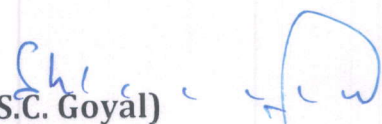
10. The complainants shall also be held entitled to a sum of Rs.20,000/- as compensation inclusive of litigation expenses.

11. The amount mentioned above shall be paid to the complainants by the respondents within a period of 90 days from the date of this order and failing which the legal consequences would follow.

13. Hence, in view of the discussion detailed above, the complaint stands disposed of.

14. Let the file be consigned to the Registry.

13.12.2019


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

13-12-2018