



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. : 4706/2018

Date of Decision : 16.12.2019

1. Smt Reeta Raina
2. Mrs Ngangom Archana Singh
3. Mr N. Dineshwar Singh
4. Ms Prashanti
R/o 406, Krishan Kunj, Plot No.14,
Sector-7, Dwarka, Delhi

Complainants

V/s

M/s Sare Gurugram Pvt Ltd.
E-7/12, LGF, Malviya Nagar,
New Delhi-110017

Respondent

Argued by:

For Complainants

Ms Aanchal Bharti, Adv

For Respondent

None

ORDER

This is a complaint under section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act

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of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Smt Reeta Raina & Ors seeking refund of sum of Rs. Rs. 80,72,709/- deposited with the respondent for booking a flat/unit no.P0 30802, 8th Floor, Building No. P-03, "The Petioles", in its project known as "Green ParC2" Crescent ParC, Sector 92, Gurugram on account of violation of obligations of the promoter under section11(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	'Green ParC2, PETIOLES ParC
II.	Location of the project	Sector-92, Gurgaon(now Gurugram), Haryana
III.	Nature of the project	Residential (construction link plan)

Unit related details		
IV.	Unit No. / Plot No.	P030802
V.	Tower No. / Block No.	P03
VI	Size of the unit (super area)	2903 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	27.11.2012
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	01.04.2013

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XII	Due date of possession as per BBA	11.12.2015
XIII	Delay in handing over possession till date	More than three 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 3.3 of BBA
Payment details		
XV	Total sale consideration	Rs.1,09,62,442/-
XVI	Total amount paid by the complainant till date	Rs. 80,72,709/-

2. It is the case of the complainants that in the year 2012, on the representation of the respondent, they booked a 4BHK flat in the project "Green ParC2" Gurugram by depositing a sum of Rs.5,00,000/- on 27.11.2012. Later on, they also deposited a sum of Rs.6,30,000/- on 17.12.2012. A Builder Buyer Agreement dated 01.04.2013 Annexure 1 was executed between the parties. As per that document, the possession of the allotted unit was to be delivered to the complainants within a period of 36 months from the date of commencement of construction i.e. October 2012 with a six months grace period. It is further the case of the complainants that they also deposited different amounts with the respondent totalling Rs.80,72,709/- against the basic sale price of Rs.1,09,62,742/-. However, despite depositing of that amount, the respondent failed to start/complete the construction. Thus, there was delay of more than three years in completing the construction and handing over the possession of the allotted unit to the complainants. When despite giving oral reminders number of

times, the respondent failed to deliver the possession of the allotted unit,

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the complainants filed this complaint seeking refund of Rs. 80,72,709/- besides interest and compensation from the respondent.

3. But the case of the respondent as set up in the written reply is that the complainants booked a unit in its project in the year 2012 but there is a delay in completing that project. The due date for completion of the project was 31.03.2019. It was denied that the complainants have been making payments of the allotted unit regularly. It was pleaded that due to circumstances beyond the control of the respondent, the construction of the project could not be completed. Moreover, the complainants are bound by the terms and conditions of BBA. There is also a delay in making payment of the amount due by various other allottees resulting in completion of the project. It was, however, pleaded that if there would be any delay in delivering the possession of the allotted unit then as per clause 3.3, the compensation would be paid and the same is being re-produced as under:-

The Company shall endeavour to offer possession of the Said Flat within a period of thirty six (36) months from the date of commencement of construction and subject to timely payment by the Allottee towards the basic sale price and other charges, as demanded in terms of this Agreement. The time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all instalments and completion of formalities required and the timely receipt of all approvals from the concerned authorities. The Company shall be entitled to six (6) months additional period in the event there is a delay in handing over possession. However, in case of delay beyond a period of six (6) months and such a delay is attributable to the Company, the Company shall be liable to pay compensation @ Rs.5.00 (Rs. Five) per sq. ft. per month of the Super Area of the Said Flat for the period of further delay".

4. All other averments made in the complaint were denied in toto.

5. After hearing both the parties and perusal of the case file, the learned authority vide its order dated 06.09.2018 directed the respondent to hand over possession of the allotted unit to the complainants by due date i.e.

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31.03.2019. It was also directed that in case, the respondent failed to deliver possession of the allotted unit to the complainants by the due date, then the latter would be entitled to seek refund of the amount deposited with the former besides interest at the prescribed rate.

6. Feeling aggrieved with the same, the respondent filed an appeal before the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh and who vide its order dated 19.07.2019 set aside that order. A direction was given to this forum to decide the complaint filed by the complainants in accordance with law after permitting the parties to amend their pleadings to bring it in parameters of rule 29 of Haryana Real Estate(Regulation and Development) Rules, 2017. In pursuant to those directions, the complainants filed an amended complaint. However, the respondent failed to put in appearance and as such, vide order dated 09.12.2019, it was ordered to be proceeded against ex-parte.

7. I have heard the learned counsel for the complainants and have also gone through the case file.

8. Some of the admitted facts of the case are that in the year 2012, the complainants booked a flat detailed above in the project of the respondent known as "The Petioles" by depositing a sum of Rs.5,00,000/- on 27.11.2012 vide Annexure-B. Later on, they also deposited vide Annexures-C, D,E & G, sums of Rs.6,30,000/-, Rs.11,30,000/-, Rs.22,72,263/- on 17.12.2012, 17.01.2013 and 22.03.2013 respectively. A Builder Buyer Agreement dated 01.04.2013 as Annexure-F was executed between the parties. A perusal of that document shows that construction of the project of the respondent was to commence in October 2012 and the possession of the allotted unit to the complainants was to be delivered within a period of 36 months with a grace period of six months as evident from a perusal of clause 3.3 of the BBA. The

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complainants continued to deposit the remaining amount under possession linked payment plan and deposited a total sum of Rs.80,72,709/-. However, despite paying that amount, the respondent failed to complete the construction of the project and to hand over possession of the allotted unit to the complainants. So, the same led to the complainants to move for refund of the amount deposited with the respondent. There is nothing on record to show that construction of the project under which the complainants were allotted unit is complete and an occupation certificate has been obtained. Though while filing reply before the amendment of the pleadings, a plea has been taken by the respondent that the possession of the allotted unit would be offered to the complainants by 31.03.2019 but neither there are any pleadings in this regard after amendment of the complaint nor any such document is on record. It shows that the respondent has failed to offer possession of the unit to the complainants. It is also evident that the complainants have already deposited a sum of Rs.80,72,709/- as detailed above with the respondent on different dates. So, on the failure of the respondent to complete the project, the complainants are entitled to seek refund of that amount besides interest from the date of each payment from it at the prescribed rate of 10.20% per annum.

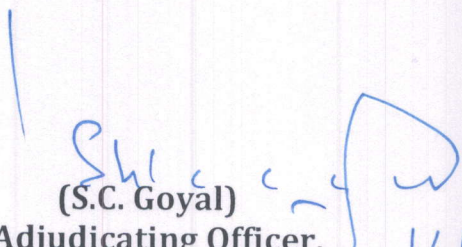
9. Thus, in view of my discussion above, the complaint filed by the complainants is ordered to be accepted. Consequently, the complainants are held entitled for refund of Rs.80,72,709/- besides interest at the prescribed rate i.e. 10.20% per annum from the date of each payment till the date of actual payment from the respondent. The complainants shall also be entitled to a sum of Rs.20,000/- as compensation inclusive of litigation expenses.

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

11. File be consigned to the registry.

16.12.2019


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

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