



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. : 4710/2019
Date of Decision : 16.12.2019**

**Shri Atul Naahar
R/o H No.B-316 B, Sushant Lok,
Phase I, Gurugram, Haryana**

Complainant

V/s

**M/s Sare Gurugram Pvt Ltd.
Regd Office: E-7/12, LGF, Malaviya Nagar,
New Delhi-110017**

Respondent

Argued by:

For Complainant

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 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 Shri Atul Nahar seeking refund of sum of Rs. 66,40,819/- deposited with the respondent for booking of a flat/unit no.G1-0304, 9th Floor, Building No. G-01, "The Grand", in its project known as "The Grand in 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 complainant, the reproduction of the following details is must, and which are as under:

Project related details		
I.	Name of the project	The Grand in Crescent 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.	G1-0304
V.	Tower No. / Block No.	G1
VI	Size of the unit (super area)	1853 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	19.03.2013
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	07.02.2014
XII	Due date of possession as per BBA	28.02.2017

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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.1,17,00,205/-
XVI	Total amount paid by the complainant till date	Rs. 66,40,819/-

2. It is the case of the complainant that in the year 2013, on the representation of the respondent, he booked a flat in the project The Grand "Crescent ParC2" Gurugram by depositing a sum of Rs.12,50,000/- on 19.03.2013. Later on, he also deposited sum of Rs.5,00,000/-, Rs.3,52,871/-, Rs.5,41,678/-, Rs.5471/-, Rs.10,55,878/-, Rs.5,00,000/-, Rs.9,59,652/-, Rs.7,800/-, Rs.14,00,00/-, Rs.59,622/- on 15.11.2013, 29.11.2013, 25.04.2014, 03.05.2014, 25.09.2014, 27.01.2015, 01.03.2015, 02.03.2015, 27.05.2015 and 29.05.2015 respectively with the respondent. A Builder Buyer Agreement dated 07.02.2014 was executed between the parties. As per that document, the possession of the allotted unit was to be delivered to the complainant within a period of 40 months from the date of commencement of construction with a six months grace period. It is further the case of the complainant that he also deposited different amounts with the respondent totalling Rs. 66,40,819/- against basic sale price of Rs.1,17,00,205/-. 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 complainant. When despite

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giving oral reminders a number of times, the respondent failed to deliver the possession of the allotted unit, the complainant filed this complaint seeking refund of Rs. 66,40,819/- besides interest and compensation from the respondent.

3. But the case of the respondent as set up in the written reply is that the complainant booked a unit in its project but there is a delay in completing the project. The due date for completion of the project was 30.03.2019. It was denied that the complainant has been making payments regularly of the allotted unit. It was pleaded that due to circumstances beyond the control of the respondent, the construction of the project could not be completed. Moreover, the complainant is bound by the terms and conditions of BBA. There is also delay in making payments of the amount due by the various allottees. It was, however, pleaded that if there would be any delay in delivering possession of the allotted unit then as per clause 3.3, compensation would be paid and the same being re-produced as under: -

The Company shall endeavour to offer possession of the Said Flat within a period of forty (40) 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 complainant by due date i.e.

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30.09.2019. It was also directed that in case, the respondent failed to deliver possession of the unit to the complainant 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 complainant 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 complainant 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 complainant and have also gone through the case file.

8. Some of the admitted facts of the case are that in the year 2013, the complainant booked a flat detailed above in the project of the respondent known as "The Grand" in Crescent ParC, Sector 92 by depositing a total sum of Rs.66,40,819/-. A BBA dated 07.02.2014 was executed between the parties. A perusal of that document shows that construction of the project of the respondent commenced in October, 2012 and the possession of the allotted unit to the complainant was to be delivered within a period of 40 months with a grace period of six months as evident from a perusal of clause 3.3 of the BBA. The complainant continued to deposit the remaining amount under possession linked payment plan and deposited a total sum of Rs.66,40,819/- However, despite paying that amount, the respondent failed

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to complete the construction of the project and to hand over possession of the allotted unit to the complainant. So, the same led to the complainant 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 complainant was allotted unit is complete and any 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 complainant by 28.08.2018 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 complainant. It is also evident that the complainant has already deposited a sum of Rs. 66,40,819/- as detailed above with the respondent on different dates. So, the complainant is entitled to seek refund of that amount besides interest from the date of each payment from the respondent at the prescribed rate of 10.20% per annum.

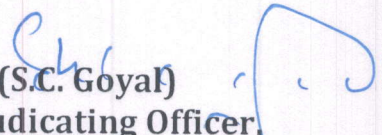
9. Thus, in view of my discussion above, the complaint filed by the complainant is ordered to be accepted. Consequently, the complainant is held entitled for refund of Rs. 66,40,819/- besides interest at the prescribed rate i.e. 10.20% per annum from the date of each payment till the date of actual payment from the respondent. The complainant shall also be entitled to a sum of Rs.20,000/- as compensation inclusive of litigation expenses.

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

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11. File be consigned to the registry.

16.12.2019


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