



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. : 716/2018  
Date of Decision : 27.01.2020**

**1. Sanjeev Tandon 2. Sumeet Tandon 3. Sudhir Tandon  
sons of late Shri Subhash Tandon, Residents of R-670, New Rajinder  
Nagar, New Delhi.**

**Complainants**

**V/s**

**(1) M/s Parsvnath Hessa Developers Private Limited at Parsvnath  
Metro Tower, New Shahdara Metro Station, Shahdara, Delhi - 110032.**

**(2) M/s Parsvnath Developers Limited, 6<sup>th</sup> floor, Arunachal Building,  
19 Barakhamba Road, New Delhi.**

**Respondents**

**Argued by:**

**For Complainants**

**Mr. Pankaj Kumar Dua, Advocate**

**For Respondents**

**Shri S.M. Ansari Advocate**

**ORDER**

1. 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 Development) Rules,

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2017(hereinafter referred as the Rules of 2017) filed by the complainants seeking refund of an amount of Rs.1,86,67,659.01p deposited with the respondents for booking of a flat/unit No.C4-503 in their residential project known as 'Parsvnath Exotica' situated at Sector-53, 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:

<b>Project related details</b>		
I.	Name of the project	"Parsvnath Exotica "
II.	Location of the project	Sector-53 ,Gurugram, Haryana
III.	Nature of the project	Residential (construction link plan)

<b>Unit related details</b>		
IV.	Unit No. / Plot No.	C4-503
V.	Tower No. / Block No.	Tower __
VI	Size of the unit (super area)	2645 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	May 2010
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	16.2.2011
XII	Due date of possession as per BBA	December 2012

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XIII	Delay in handing over possession till date	More than 7 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 10 (c) of BBA (annexure-A1)
<b>Payment details</b>		
XV	Total sale consideration	Rs.1,86,67,659.57 ps
XVI	Total amount paid by the complainants till date	Rs. 1,86,62,892.01 ps

2. It is the case of the complainants that they booked a flat/residential unit in the project of the respondents known as "Parsvnath Exotica" having an approximate super area of 2645 sq. ft, launched by them in the year 2010 for a basic sale price of Rs.1,85,15,000/- inclusive of EDC, external electrification, fire fighting installation, pipe for gas supply, split unit air conditioners in drawing/dinning and all bed rooms and membership fees of the re-creational club etc. A sum of Rs.1,86,62,892.01 ps was deposited by them with the respondents on different dates and which led to issuance of an allotment letter (annexure A-2) dated 29.06.2010 with regard to unit No.C4-503. A Flat Buyer Agreement (annexure A-1) was executed between the parties on 16.2.2011. It was provided under clause 10 (a) of that agreement that the construction of the block in which the flat is located shall be completed within a period of 36 months from the commencement of construction i.e. 17.09.2010 or 24 months from the date of booking of the flat whichever is later with a grace period of six months. It is the case of the complainants that though they booked a residential unit in June, 2010 but the construction of the project had already started in the year 2009 and the same was to be completed by December 2012. It is further the case of the

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complainants that on 27.02.2017 (annexure A-3), an offer of fit out of the allotted unit was issued by the respondents with final statement of account but they had already deposited a sum of Rs. 1,86,62,892.01 ps with them. Subsequently, it came to their knowledge that one M/s Amrit Steels Private Limited in collusion with the respondents filed a suit (annexure A-4) seeking a decree for specific performance, payment of compensation and permanent injunction with regard to allotted unit alongwith some other units before the Hon'ble Delhi High Court on 23.05.2017 and wherein one of them namely Sanjeev Tandon besides others were impleaded as respondents. It was pleaded in that suit that the respondents agreed to sell some units including the allotted one to M/s Amrit Steels Pvt. Ltd. in June,2009 for a sum of Rs. 7,50,00,000/- and promise to sell the same with it. So, this shows collusion of respondents with that company. Though, that matter was listed before the Hon'ble Delhi High Court on 30.05.2017 but the same was allowed to be withdrawn vide annexure A-5 for lack of territorial jurisdiction. The prospective purchaser i.e. M/s Amrit Steels Pvt Ltd. filed an other suit annexure A-7 on the same cause of action on 30.08.2017 before the Civil Courts, Gurugram and that is pending for adjudication. It is the case of the complainants that M/s Amrit Steels Pvt. Ltd. in that suits is seeking a decree for specific performance of the unit in question besides other unites and also seeking execution of conveyance deed of that unit with a direction to hand over physical possession, damages etc. interest and restraining the respondents, complainants and others from selling or alienating that property. Though, one of the claimant, namely Sanjeev Tandon filed written statement annexure A-8 by controverting the pleas of M/s Amrit Steels Pvt. Ltd but that matter is still pending before the Civil Court, Gurugram. It is also the case of the complainants that respondents filed written statement annexure A-6 in that suit and controverted the pleas of M/s Amrit Steels Pvt.

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Ltd. but admitting agreement of sale of the allotted unit besides some other units belonging into them. Though, it was pleaded that the agreement of sale could not mature but failed to produce any document issued by M/s Amrit Steel pvt. Ltd. showing cancellation of agreement of sale and return of a sum of Rs. 7.5 Crores received by them. So, it shows collusion between them. It also shows that the title of the allotted unit is under dispute between the respondents and M/s Amrit Steels Pvt. Ltd. Moreover, neither the project of the respondents is complete nor they had any clear title over the allotted unit. So, the claimants are not obliged to take possession of the flat unless it is complete in all respects including the completion certification. Thus, on these broad averments, the claimants filed a complaint seeking refund of the amount deposited with the respondents besides interest and other charges.

3. But the case of the respondents as set up in the reply is that though the complainants were allotted the unit in question but they are not ready to take possession after its completion. Moreover, a number of allottees have already occupied their respective flats for carrying out fit out works in their units. Even the complainants were offered possession of the allotted unit on 27.02.2017 alongwith final statement of account vide annexure A-3. But, instead of taking possession, they filed this complaint and which is not legally maintainable. It was denied that M/s Amrit Steels Pvt. Ltd has any interest, or title over the allotted unit. In fact, in the month of June, 2009, M/s Amrit Steels Pvt. Ltd booked seven flats including the allotted unit in the project of the respondents known as Parsvnath Exotica, Gurugram and paid a sum of Rs.7,50,00,000/-. However, in the year November, 2009, after a mutual discussion, M/s Amrit Steels Pvt. Ltd. showed its interest in discontinuation of allotment of those units and which led to cancellation and transfer of that amount to some other project. The request made by M/s Amrit Steels Pvt. Ltd was accepted by the respondents

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vide their letter dated 20.11.2009 and communication dated 11.12.2009 was also sent. So, after cancellation of the allotment of the allotted unit and some other units, the respondents sold those units in the open market and which were subsequently purchased by different buyers including the complainants. It was also pleaded that though M/s Amrit Steels Pvt. Ltd filed a civil suit seeing specific performance of the allotted unit besides some other units but on baseless allegations and which is pending for adjudication. It was denied that M/s Amrit Steels Pvt. Ltd is having any concern with the allotted unit and the pendency of the civil suit with regard to same before civil judge has any bearing on the merits of this complaint. It was denied that the construction of the project in which the complainants were allotted a unit is not complete and there is any delay in completing the same. It was also denied that the complainants are entitled to seek refund of the amount deposited with the respondents on any count.

4. After hearing both the parties and perusing the case file, the learned Authority vide order dated 26.02.2019 rejected the plea of the complainants for refund of the amount deposited with the respondents and directed the later to give interest to the former at the prescribed rate of interest i.e. 10.75% per annum on the amount deposited by them for every month of delay and adjusting the interest so accrued from that date till the date of order. Feeling aggrieved with the same, the complainants filed an appeal before the Hon'ble Appellate Tribunal, and who vide orders dated 16.08.2019 accepted the same with a direction to both the parties to amend the pleadings in order to bring the same within the parameters of form CAO as provided under Rule 29 of the Rules, 2017.

5. After that both the parties put in appearance and filed their respective amended pleadings and reiterated their earlier pleas.

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6. I have heard the learned counsel for both the parties and have also perused the case file.

7. Some of the admitted facts of the case are that in June, 2010, the complainants booked a flat bearing No.C4-503 measuring 2645 sq. ft. for a sum of Rs.1,86,67,659/- with the respondents in their project known as Parsvnath Exotica situated in Sector-53, Gurugram. A Flat Buyer Agreement (Annexure A1) was executed between the parties on 16.02.2011. A perusal of clause 10(a) of that document shows the date of possession to be 36 months from the commencement of construction of the block in which allotted unit is located i.e. or 24 months from the date of booking whichever is later with a grace period of six months and which comes to 17.03.2014. The complainants were allotted the residential unit under a construction linked payment plan. They continued to pay the different amounts and deposited a total sum of Rs.1,86,62,892/- upto 17.02.2017. It is a fact that the respondents failed to offer possession of the allotted unit to the complainants within the stipulated period. It has come on the record that in the month of June, 2009, the respondents agreed to sell the allotted unit alongwith some other units to M/s Amrit Steels Pvt. Ltd and received a sum of Rs.7,50,00,000/- from it. Though, it is pleaded on behalf of the respondents that the deal made in this regard by them that M/s Amrit Steels Pvt. Ltd. was cancelled November, 2009 but that factum is unilateralone. They have not placed any document on record sent to them by M/s Amrit Steels Pvt. Ltd. showing cancellation of agreement of sale of the allotted unit and some others and return of the earnest money of Rs. 7.5 Crores in lieu of that deal. It is also a fact that M/s Amrit Steels Pvt. Ltd. filed a suit against the respondents and others seeking a decree of specific performance with regard to the allotted unit and besides some other units before the Hon'ble

Delhi High Court on 23.05.2017. But that suit was dismissed as withdrawn

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annexure A-5 for lack of jurisdiction on 30.05.2017. The second round of litigation commenced before the Civil Courts at Gurugram where the other suit annexure A-7 titled as M/s Amrit Steels Pvt. Ltd. versus Parsvnath and others was filed and which is admittedly pending for adjudication in the month of April, 2020 before Civil Judge, Gurugram. Though, the respondents filed written statement annexure A-6 in that suit by controverting the pleas taken by M/s Amrit Steels Pvt. Ltd. but title of the allotted unit is under litigation and that suit is still pending. One of the claimant, namely, Sanjeev Tandon has also filed written statement by taking a plea of Apartment Buyer Agreement dated 16.02.2011 and claiming that property from the respondents. Now, the issue for consideration arises as to whether in the face of pendency of litigation with regard to title of allotted unit between the respondents and M/s Amrit Steels Pvt. Ltd, the claimants can legally seek refund of the amount deposited; Secondly when the respondents have already issued a fit out offer to the complainants vide letter dated 27.02.2017 alongwith final statement of account, then, whether the later are legally entitled to seek refund of the amount deposited. Thirdly, whether there was any delay in offering possession of the allotted unit to the complainants and the challenges faced by the respondents to complete the project are liable to be excluded from the due date of possession.

8. It is evident from a perusal of written statement dated 10.12.2019 filed by the respondents that they agreed to sell to M/s Amrit Steels Pvt. Ltd. the allotted unit besides some other units in their project known as "Parsvnath Exotica" paid a sum of Rs.7,50,00,000/- in June, 2009. It has come in their pleadings that in November 2009, M/s Amrit Steels Pvt. Ltd discontinued with the allotment of those units and the same led to cancellation of that offer vide letter dated 20.11.2009. A letter dated

11.12.2009 was also sent by the respondents to M/s Amrit Steels Pvt. Ltd.



asking it to return the original documents and which allegedly led to cancellation of those units including that of the claimants and selling them in the open market. Though letters dated 20.11.2009 and 11.12.2009 allegedly sent by the respondents to M/s Amrit Steels Pvt. Ltd. are on the file but there is nothing on the record to show that the later acknowledged the same and cancelled the allotment of residential units and a sum of Rs.7,50,00,000/- given towards the allotment was returned. Even there is no document on the file to show that the amount sent by the respondents to M/s Amrit Steels Pvt. Ltd. was reflected in the accounts of the former. So, all this shows that these are one sided communications and do not reflect the true picture about the transactions allegedly made between the respondents and M/s Amrit Steels Pvt, Ltd. in the month of June, 2009 to November, 2009. There is another factor showing collusion between the respondents and M/s Amrit Steels Pvt. Ltd. with regard to the allotted unit. M/s Amrit Steel Pvt. Ltd. filed a civil suit before the Hon'ble Delhi High Court on 23.05.2017 (Annexure A6) and later-on withdrew that suit on 30.05.2017 for lack of jurisdiction. The matter did not end there. M/s Amrit Steels Pvt. Ltd. again filed a suit seeking a decree for specific performance on the basis of agreements of sale dated 19.06.2009 29.08.2009 and 07.09.2009 with regard to units no. C4-202, C4-203, C4-301, C4-503, B5-101, B5-1101 and C4-G02 before the Civil Courts at Gurugram and that litigation is admittedly pending for 04.04.2020. The respondents entered into a Flat Buyer Agreement with regard to allotted unit with the claimants on 16.2.2011 fully knowing the existence of earlier agreements entered into by them with M/s Amrit Steels Pvt. Ltd. in the year 2009. If the complainants had been in the knowledge of the earlier agreements qua the allotted unit and some others by the respondents then they would not have approached them for purchase of that unit in the year 2010 and paid a huge sum of Rs. 1,86,62,829.01 ps

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upto 17.02.2017. The civil litigation with regard to allotted unit and some others commenced after 17.02.2017 i.e. 23.05.2017 and which entered in its withdrawal on 30.05.2017 and later on initiation of second round of litigation before civil courts, Gurugram after that. Thus the respondents cheated the complainants, induced them to part with a huge amount by preparing forged and fabricated documents of the allotted unit and depriving them of that amount for more than 7 years. So, it is a clear-cut case of cheating and forgery committed by the respondents and the claimants are at liberty to initiate proceedings in this regard against them if they are so advised.

9. Even otherwise, the case of respondents is hit by the principle of lis pendens and are not competent to transfer better title than they themselves have of the allotted unit as the title of that property is under dispute and civil litigation is pending before the competent court of jurisdiction. In case **T. Ravi and another versus B. China Narasimha and others etc. in Civil Appeal No.4731-4732 of 2010 decided on 21.03.2017**, it was held by the Hon'ble Apex Court of the land that the doctrine of lis pendens is applicable even to proceedings in nature of an appeal. It was in the knowledge of the respondents that they have already agreed to sell the allotted unit besides some other units in their project M/s Parsvnath Exotica situated in Sector-53, Gurugram to M/s Amrit Steels Pvt. Ltd. in the year 2009. But despite that they agreed to sell the allotted unit to the complainants for a sum of Rs.1,86,67,659/- and even received different amounts from time to time totalling Rs.1,86,62,892/- upto 17.2.2017. If the fact about the earlier transactions between the respondents and M/s Amrit Steels Pvt. Ltd. had been in the knowledge of the claimants, then, there was no occasion for them to enter into builder buyer agreement annexure A-1 dated 16.02.2011 with regard to the allotted unit and deposit such a huge amount in the project of

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the respondents mentioned above up to 17.02.2017. Even the continuation of the civil proceedings with regard to allotted unit before the Civil Court and adding the respondents as well as one of the claimants besides others as a party shows that the title of that property is not clear and is under dispute. Moreover, the claimants can't be offered the possession with clear title of the allotted unit as litigation with regard to the same is pending before the competent court of jurisdiction and the respondents can't convey a clear title of that property to the claimants. Moreover, Section 52 of the Transfer of Property Act, 1882 provides that **"during the pendency in any court having authority within the limits of India ... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suits or proceedings so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose. It would, therefore, be clear that the respondents in that suits are prohibited by operation of Section 52 to deal with the property and cannot transfer or otherwise deal with in any way affecting the rights of the other party except with the order or authority of the court. The principles specified in Section 52 of the Transfer of Property Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The same views were expressed by the Hon'ble Apex Court of the land in cases of Sarvinder Singh Vs. Dalip Singh (1996) 5 SCC**

**539** and followed in case of A. Nawab John Vs. V.N. Suramaniam (2012)

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7 SCC 738. Then in case of Inderjit Singh Bakshi Vs. S.M.V. Agencies Pvt Ltd. the Hon'ble National Commission, New Delhi in appeal No.729/13 decided on 30.11.2015, held that an allottee is not obliged to take possession of a flat until it is complete in every respect including the completion certificate. The project of the respondents was to be completed by December, 2012. A period of more than 7 years has already been expired and the title of the respondents over the allotted unit is not clear and is under dispute. So, the claimants are legally entitled to seek refund of the amount deposited with the respondent and they can not ask them to take its possession of the allotted unit in the circumstances detailed above.

10. The second and third issues raised on behalf of the respondents are with regard to completion of the project and the reasons due to which it could not be completed. It has been argued that though the project was to be completed within the stipulated period but due to following reasons reproduced and beyond their control, they could not complete the project.

*i. Non-booking of all apartments seriously affected the construction:- it is submitted that the global recession hit the economy and is continuing particularly in the real estate sector. The global recession largely affected the real estate sector. It is submitted that the construction of project of the Respondents is dependent upon the amount of money being received from the bookings made and money received henceforth in form of instalments by the Allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the Respondents at the time of launch of the project. That, reduced number of bookings along with the fact that several Allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the Respondents henceforth causing delay in the construction work of the project.*

**ii. Other various challenges being faced by the Respondents:-**

*The following various problems which are beyond the control of the Respondents seriously affected the construction;*

- a. Lack of adequate sources of finance;
- b. Shortage of labour;
- c. Rising manpower and material costs;

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*d. Approvals and procedural difficulties*

iii. In addition to aforesaid challenges, the following factors also played major role in delaying the offer of possession.

- a. *There was extreme shortage of water in the region which affected the construction works.*
- b. *There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.*
- c. *Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction work of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours.*
- d. *Recession in economy also resulted in availability of labour and raw-materials becoming source.*
- e. *There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).*

11. More-over, it is also submitted that the project is complete and some of the allottees occupied the flats after receiving fit out notices on 27.2.2017. But again the plea advanced in this regard is devoid of merit. No doubt, some of the allottees of the project might have taken possession after receiving fit out offer whether the complainants were obliged to take possession of the allotted unit on the basis of notice dated 27.2.2017 issued by the respondents. The answer is in the negative. It is not disputed that title of the allotted unit is under dispute and litigation with regard to the same is pending before Civil Court, Gurugram. M/s Amrit Steels Pvt. Ltd is claiming ownership of the allotted unit alongwith some other units on the basis of agreements of sale of different dates w.e.f 19.06.2009, 29.08.2009 and 07.09.2009 with regard to units no. C4-202, C4-203, C4-301, C4-503, B5-101, B5-1101 and C4-G02 inclusive of allotted unit. So, unless the claimants are offered possession of a unit with a clear title after completion, they are not obliged to take the same. In fact, instead of offering possession of a unit to

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the claimants having clear cut title, the respondents are playing a game of hide and seek and shirking from their responsibility to indemnify them for the acts of omission and commission and playing fraud with them. It is nothing but a clear cut case of cheating, forgery and inducement committed by the respondents initially by allotting a unit already agreed to be sold to M/s Amrit Steels Pvt. Ltd in the year 2009 and then receiving a huge amount of Rs.1,86,62,892/- from the claimants during a span of 7 years and not disclosing their earlier transactions with regard to sale of that unit. So, in such a situation, though the respondents might have completed the project and offered possession of the allotted unit to the claimants and other allottees by issuing fit out notice on 27.02.2017 but the reasons given by them for delay in completing the project and receiving occupation certificate shortly cannot be taken into consideration due to the factors mentioned above. So, in such a situation, all the pleas advanced in this regard on behalf of the respondents are devoid of merit and do not carry any weight.

12. Thus, in view of my discussion above, the complaint filed by the complainants seeking refund of the amount deposited with the respondents with regard to allotment of flat in question is ordered to be accepted. Consequently, the following directions are hereby ordered to be issued to the respondents:-

*i) to refund the entire amount of Rs.1,86,62,892/- alongwith prescribed rate of interest at the rate of 10.20% from the date of each payment till the return of full amount to them.*

*ii) In addition to this, the respondents shall also pay a sum of Rs.3,00,000/- as compensation to the complainants for mental agony and harassment undergone by them inclusive a sum of Rs. 10,000/- as costs of litigation for persuing various matters before different forums.*

13. The payments in terms of this order shall be made by the respondents to the claimants within a period of 90 days from today.

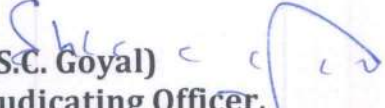
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14. Hence in view of discussion detailed above, the complaint stands disposed of accordingly.

15. Let the file be consigned to the Registry.

27.1.2020

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