



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

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. : 5610/178/2018
Date of Decision : 25.02.2020

Jatin Madani
R/o F-14/50, Second Floor, Model Town
Delhi-110009

Complainant

V/s

M/s North Star Apartments Pvt Ltd.
4th Floor, The Plaza IFFCO Chowk,
M G Road, Gurugram

Respondent

Argued by:

For Complainant

Mr. Venket Rao, Advocate

For Respondent

Mr. C. K. Sharma, Advocate

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 Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by the complainant for refund of an amount of Rs.37,29,094/- deposited with the respondent for booking of a flat/unit No.16-B, First Floor on its

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residential project known as Almeria , Sector-84, 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 complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	ALMERIA
II.	Location of the project	Sector-84, Gurugram, Haryana
III.	Nature of the project	Residential (construction link plan)

Unit related details		
IV.	Unit No. / Plot No.	16-B, First Floor
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	2000 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	30.03.2012
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	11.07.2012
XII	Due date of possession as per BBA	11.07.2015
XIII	Delay in handing over possession till date	More than 4 ½ years

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XIV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 8.3(b) of BBA
Payment details		
XV	Total sale consideration	Rs.1,05,50,000/-
XVI	Total amount paid by the complainant till date	Rs.37,29,094/-

2. It is the case of the complainant that he booked a residential unit measuring 2,000 sq ft in the project of the respondent known as Almeria situated in Sector 84, Gurugram for a total sale consideration of Rs.1,05,50,000/- on 30.03.2012 and deposited a sum of Rs.10,00,000/- with regard to that unit. He was after that allotted a residential unit on 14.05.2012 vide Annex R-1 under the construction linked payment plan. A Flat Buyer Agreement dated 11.07.2012 was executed between the parties. It is the case of the complaint that he deposited a sum of Rs.37,29,094/- upto December, 2012. Though the possession of the allotted unit was to be delivered within a period of 36 months i.e. upto 11.07.2015 but the same was not offered within the stipulated period. There was also misrepresentation with regard to access road to the project in which the complainant was allotted the unit. The complainant made a number of oral representations in this regard with the respondent and ultimately stopped making payment. So, on these broad averments, he filed complaint seeking refund of the amount deposited with the respondent besides interest and other charges.

3. But the case of the respondent is otherwise and who took a plea that though the complainant booked a residential unit in its project known as

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Almeria situated in sector 84, Gurugram but after depositing some amount, he failed to pay the remaining amount. A number of reminders were issued to him requesting him to make payment but without any result. Though there is delay in delivery of the possession but that is due to non-payment of the amount due by the complainant and various other allottees. It was denied that there was no direct access to the project in which the complainant was allotted the unit. It is further pleaded that if the complainant was not satisfied with the progress of the project, then he was at liberty to exit as per clause 8.3(b) of the Flat Buyer Agreement but he did not exercise that option. Now, since the project is going to be completed and he was in arrears of amount due, so instead of depositing that amount, he is taking lame excuses seeking refund of the amount deposited with the respondent.

4. After hearing both the parties and perusing the case file, the learned Authority vide its orders dated 10.07.2018 directed the respondent to give interest at the prescribed rate to the complainant for every month of delay from the date of possession besides a direction to the complainant to make payment of the amount due alongwith interest at the prescribed rate. Feeling aggrieved with the same, the complainant filed an appeal before the Hon'ble Appellate Tribunal, Chandigarh and who vide orders dated 19.07.2019 set aside that order and directed this forum to proceed further in accordance with law after permitting the parties to amend the pleadings to bring the same as per format under rule 29 of Real Estate(Regulations and Developments) Rules 2017. In pursuance to the directions passed by the Hon'ble Appellate Tribunal, the complainant filed an amended complaint reiterating his earlier version. The respondent also filed reply by taking almost the same pleas as taken earlier.

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5. During the pendency of the case, it was observed that there is some ambiguity with regard to access to the project of the respondent in which the complainant was allotted the residential unit. So, on a request made by the complainant, a local commission was appointed to report about the following facts:

- i) The distance of the project from National Highway No.8
- ii) Whether there is any direct access to that project from Dwarka-Gurugram State Highway or not ?

6. The Local Commission consisting of a team headed by Mr. Sumeet Kumar, Engineer Executive visited the project of the respondent on 09.01.2020 and submitted a report as under:

- i). With respect to the first issue, the distance of the project named, 'The Almeria' from NH-8 has been measured by independent cars (i.e. complainant, respondent, local commissioner), which comes out to be an average of 2.8 kms.
- ii) With respect to second issue, there is direct access to the project from Dwarka Gurugram State Highway. The project is connected to Dwarka Gurugram State Highway by a sector road which stretch upto 0.7 km.

CONCLUSION:

During site inspection, the complete project named "The Almeria" being developed by SS Group Ltd has been physically inspected and the distance of project from NH-8 Dwarka Gurugram State Highway has been measured as detailed further:

- The distance of the project from NH-8 is 2.8 kms.
- There is no direct access of the project from Dwarka Gurugram State Highway but the project is connected to Dwarka expressway through a sector road of 0.7 km.

Neither of the party filed any objection to the report of the Local Commission.

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

8. Some of the admitted facts of the case are that the complainant booked a flat bearing No.16-B, First Floor in the project of the respondent known as Almeria situated in Sector 84, Gurugram against a total sale [consideration of Rs.1,05,50,000/- on 10.04.2012 by paying a sum of Rs.10,00,000/-. A Flat Buyer Agreement was executed between the parties and as per the same, the possession of the allotted unit was to be delivered to the complainant within a period of 36 months from the date of execution of FBA i.e. by 11.07.2015. There is admittedly delay of more than 4 ½ years in offering possession of the allotted unit by the respondent to the complainant. It is also a fact that the complainant deposited a sum of Rs.37,29,094/- by December, 2012 and did not deposit the remaining amount. The allotment of the residential unit was made to the complainant under the construction linked payment plan. It is also a fact that despite issuance of various reminders Annex. R-2 to Annex. R-4 respectively after December, 2012, the complainant failed to pay the remaining amount due towards the allotment of the residential unit. It is pleaded on behalf of the complainant that since the respondent gave false information with regard to access to its project from Dwarka-Gurugram State Highway, so he choose to withdraw from the project and was not liable to pay any further amount in view of the provisions of Section 12 of Real Estate(Regulation and Development) Act, 2016. It has come on record that on 17.10.2018, the respondent received an occupation certificate of the project in which the complainant was allotted a unit and possession of the same was offered to the complainant on 28.11.2018 vide annexures R-6 to R-8 respectively. The complaint was filed seeking refund of the amount deposited with the respondent only on 19.04.2018. So, if there was any misrepresentation with regard to the access to the project from the Dwarka-

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Gurugram State Highway, then the complainant should have pointed out at the very outset or after that. He kept mum for a period of more than five years and knocked the doors of the Authority only in April, 2018. So, the complaint filed in this regard is not maintainable. Rather, the complainant is under an obligation to comply with the terms and conditions of allotment by paying the amount due besides interest at the agreed rate and to take possession of the unit in the project where there is occupancy of more than 50%.

9. It is a fact on record that the complainant booked a residential unit with the respondent on 10.04.2012 at a total cost of Rs.1,05,50,000/- by paying a sum of Rs.10,00,000/-. The allotment of the unit Annex R-1 was made to the complainant under the construction linked payment plan. He paid a total sum of Rs.37,29,094/- by December, 2012 and did not pay the remaining amount as per FBA. Though the possession of the unit was to be delivered within a period of 36 months i.e. by 11.07.2015 but there was delay of more than 4 ½ years. It is a fact that the project has been completed and occupation certificate has been received by the respondent in October, 2018 and in pursuance to that offer of possession was made to different allottees including the complainant on 28.11.2018. Admittedly, the complainant did not exercise the option of exit from the project after December, 2012 up to the date of filing of the complaint i.e. April, 2018. He was issued a number of reminders Annex R -2 to R-4 respectively by the respondent to pay the remaining amount. But neither he responded to any notice nor filed any representation with any authority except the present complaint in April, 2018. The only plea taken on his behalf is with regard to the obligations of the promoter regarding veracity of the advertisements or prospectus as contained in Section 12 of the Act, 2016, which provides as

under:

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14.06.2018 respectively placed on the file which shows that cancellation of the unit was improper without due procedure.

12. The matter may be taken from another angle. After the respondent received occupation certificate of the project in which the complainant was allotted a unit he was offered possession for fit out vide letter dated 30.11.2018 (Anex R-7). Thus, all these facts prove one thing that the complainant by his own act and conduct and remaining silent for a period of more than five years is estopped from raising a plea under section 12 of the Act of 2016 with regard to false mis-representation qua the access to the project and its distance from Dwarka-Gurugram Expressway. However, in view of the facts detailed earlier, the respondent is also at fault by not acting against the complainant after sending letters dated 01.12.2012 vide which it cancelled the allotted unit in his favour and not offering him the deposited amount after deducting 10% of the total sale amount. Even keeping in view these situations, the Haryana Real Estate Regulatory Authority, Gurugram framed regulations in the year 2018, published in the official Gazette on 05.12.2018. So, keeping in view the provisions of regulations above, only a reasonable amount can be forfeited as earnest money in the event of default on the part of the complainant/purchaser and it is not admissible under law to forfeit any amount beyond a reasonable limit unless, it is shown that the person forfeiting the said amount had actually suffered a loss to the extent of amount forfeiting by him. This view was taken by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in case **M/s DLF Vs Bhagwati Narula**, Revision Petition No.3860 of 2014 decided on 06.01.2015. A similar view was taken by the Hon'ble Apex Court of the land in cases of **Maula Bux Vs Union of India & Ors**, 1970 AIR(SC), 1955 **Indian Oil Corporation Limited Vs Nilofer Siddiqui and Ors**, Civil Appeal No.7266 of 2009 decided on

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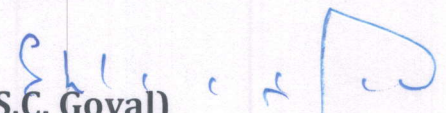
01.12.2015 and **Balmer Lawrie and Co. and Ors Vs Partha Sarathi Sen Roy and Ors.** Civil Appeal No.419-426 of 2004 decided on 20.02.2013. The complainant deposited a sum of Rs.37,29,094/- with the respondent by December, 2012 and after that he did not deposit the remaining amount despite numerous reminders and which ultimately led to cancellation of his unit vide letter dated 01.12.2012. So, in such a situation, the respondent was bound to send deposited amount minus 10% of the total sale price of the unit. Since that was not done and taking into consideration all the material facts produced by the parties, the following directions are hereby issued:

- i) The respondent is directed to refund Rs.26,74,094/- after deducting 10% of the total sale consideration towards earnest money
- ii) The respondent shall also be liable to pay interest at the prescribed rate i.e. 10.20% p.a. on the said amount of Rs.26,74,094/- from the date cancellation i.e. 01.12.2012 till the date of actual payment.

13. This order shall be complied with by the respondent within a period of 90 days and failing which legal consequences would follow.

14. File be consigned to the Registry.

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

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