



**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. : 5054/180/2018**  
**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.**  
**4<sup>th</sup> 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

*Shri C. K. Sharma*  
*25/2/2020*



by the complainant for refund of an amount of Rs.49,39,812/- deposited with the respondent for booking of a flat/unit No.16-B, Ground Floor in its residential project known as Almeria , Sector-84, 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:

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

<b>Unit related details</b>		
IV.	Unit No. / Plot No.	16-B, Ground 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 EBA	11.07.2015

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XIII	Delay in handing over possession till date	More than 4 ½ 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 8.3(b) of BBA

**Payment details**

XV	Total sale consideration	Rs.1,16,00,000/-
XVI	Total amount paid by the complainant till date	Rs.49,39,812/-

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.1,16,00,000/- 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 09.05.2012 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.49,39,812/- 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 a complaint seeking refund of the amount deposited with the respondent besides interest and other charges.

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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 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 <sup>was</sup> is in arrears of amount due so instead of depositing that amount he is taking lame excuse 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

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reiterating his earlier version. The respondent also filed reply by taking almost the same pleas as taken earlier.

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 a residential unit. So, on a request made by the complainant, a local commission was appointed in connected case No.178/2018 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 Commissioner 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.

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Neither of the party filed objections to the report of the local commission.

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, Ground Floor in the project of the respondent known as Almeria situated in Sector 84, Gurugram against a total sale [consideration of Rs.1,16,00,000/- on 11.07.2012 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.49,39,812/- 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 R-4 respectively after Decembers, 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 occupation certificate of the project in which the complainant was allotted a unit and possession of the same was offered to him on 28.11.2018 vide Annexures R-6 to R-8 respectively. This complaint

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was filed seeking refund of the amount deposited with the respondent only on 19.04.2018. So, if there was any mis-representation with regard to the access to the project from the Dwarka-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 11.07.2012 at a total cost of Rs.1,16,00,000/- by paying a sum of Rs.10,00,000/-. The allotment of the unit was made to the complainant under the construction linked payment plan. He paid a sum of Rs.49,39,812/- 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

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the promoter regarding veracity of the advertisements or prospectus as contained in Section 12 of the Act, 2016.

10. It is pleaded that by an advertisement in the brochure, the respondent represented that the project in which the complainant is being allotted a unit is having a direct access from Dwarka-Gurugram State Highway and its distance from National Highway No.8 is one kilometre. However, the report of the Local Commission as detailed earlier proves otherwise on both the counts and which states that the distance of the project from National Highway No.8 is 2.8 km. Secondly, there is no direct access to the project from Dwarka-Gurugram State Highway. It is connected to Dwarka-Gurugram State highway by a Sector road which stretch upto 0.7 km. So, now, the question arises as to whether the statement made by the respondent with regard to distance of its project from National Highway No.8 and Dwarka-Gurugram State Highway amounts to false statement and the complainant is entitled to withdraw from the project and is liable to be compensated by ordering refund of the deposited amount with interest.

11. Admittedly, after the last deposit made by the complainant in December, 2012 neither he paid any amount towards the allotted unit nor made any representation against misleading information in the brochure with regard to access to the project in which he was allotted a unit. It has come on record that a number of reminders were issued to the complainant to pay the remaining amount but with no positive result. Lastly, he was issued a final notice requiring him to pay the amount due and which ultimately led to cancellation of his unit vide letter dated 14.11.2013(P-74). Despite cancellation of the allotted unit, reminders for payment of the amount due were admittedly sent by the respondent to the complainant as evident from letters dated 19.05.2014, 19.06.2014, 20.08.2014, 30.08.2014, 14.08.2017, 10.04.2018, 12.06.2018 and 14.06.2018

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respectively and which shows that cancellation of the allotted unit was improper without due procedure.

12. The case 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 letter dated 14.11.2013 and vide which it cancelled the allotted unit in his favour and offering him the deposited amount after deducting 10% of the total sale consideration. Even keeping in view these situations, the Haryana Real Estate Regulatory Authority, Gurugram framed regulations in the year 2018 and 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 in 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 forfeited 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 01.12.2015 and **Balmer**

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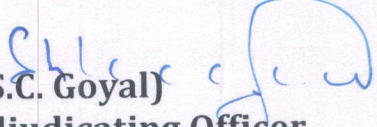
**Lawrie and Co. and Ors Vs Partha Sarathi Sen Roy and Ors**, Civil Appeal No.419 to 426 of 2004 decided on 20.02.2013 The complainant deposited a sum of Rs.49,39,812/- with the respondent by December, 2012 and after that he did not deposit the remaining amount despite numerous reminders and which ultimately led to cancellation of his unit vide letter dated 14.11.2013. So, in such a situation the respondent was bound to send deposited amount minus 10% of the total sale consideration of the unit to the complainant. Since that was not done and <sup>So,</sup> 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.37,79,812/- 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.37,79,812/- from the date cancellation i.e. 14.11.2013 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.

25.02.2020

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

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