



**OHARYANA 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. : 1381/2018

Date of Decision : 15.10.2019

**Smt Sushma Mehta & Mr Jawahar Lal Mehta
R/o A-58, Vikas Puri,
New Delhi-110018**

Complainants

V/s

**M/s SARE GURUGRAM PVT LTD
Plot No.46, Udyog Vihar, Phase IV
Gurugram, Haryana**

Respondent

Argued by:

For Complainant

Mr Bhupinder Pratap Singh, 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 Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by Smt Sushma Mehta and Jawahar Lal Mehta for the refund of Rs.57,88,807/- deposited with the respondent for booking of a flat/unit no.02, second floor, Tower No.08(08-02-02), in its project known as

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“CRESCENT PARC” in Sector 92, 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 complainants, reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	CRESCENT PARC PHASE III
II.	Location of the project	Sector-92, Gurgaon, Haryana
III.	Nature of the project	Residential (construction link plan)

Unit related details		
IV.	Unit No. / Plot No.	02(08-02-02)
V.	Tower No. / Block No.	Tower 08
VI	Size of the unit (super area)	1900 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	14.02.2011
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1)	16.08.2012
XII	Due date of possession as per BBA	January, 2015
XIII	Delay in handing over possession till date	More than 4 years
XIV	Penalty to be paid by the respondent in case of delay of	As per clause 3.3 of BBA

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	handing over possession as per the said BBA	
Payment details		
XV	Total sale consideration	Rs.57,69,800/-
XVI	Total amount paid by the complainants till date	Rs. 57,88,807/-.

2. It is a case of the complainants that lured by the advertisements in various newspapers with regard to the project of the respondent known as 'CRESCENT PARC', they booked a unit no.02, second floor, Tower No.08 in its project on 14.02.2011 for a sum of Rs.57,69,800/- and deposited 95% of the unit amount till January, 2013. But despite that the respondent did not hand over the possession of their unit. It is also the case of the complainants that the respondent later on increased the super area by 243 sq ft arbitrarily at the last moment vide its letter dated 30.05.2017 just to compensate the penalty amount of 48 months due to delay in delivery of the project. When despite a number of reminders and lapse of more than 8 years, the respondent failed to deliver the possession of the allotted unit to the complainants, they were left with no other alternative but to file this complaint for recovery of amount deposited besides interest and other charges.

3. Despite issuance of notice, respondent failed to put in appearance and, as such, vide order dated 09.10.2019, it was proceeded against ex-parte.

4. I have heard the learned counsel for the complainants and have also perused the case file.

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5. A perusal of various documents placed on file show that the complainants booked a flat in the project of the respondent known as CRESCENT PARC, Sector 92, Gurugram on 14.02.2011 and paid a total sum of Rs.57,88,807/-. Though possession of the allotted unit was to be delivered to the complainants by 10.09.2015 as per clause 3.3 of the BBA but the same was not delivered. Complainants have already paid 95% of the cost of construction of the allotted unit but there is no progress in the construction of the project in which the complainants were allotted the unit by the respondent. So, keeping in view of these facts, the following issues arise for consideration:

- I) Whether the respondent/developer violated the terms and conditions of the Builder Buyer Agreement?
- II) Whether there was any reasonable justification for delay to offer the possession of the allotted unit?
- III) Whether the claimants are entitled for refund of paid amount?

6. A perusal of various documents placed on file show that booking of unit by the complainants with the respondent on 14.02.2011 for a total sum of Rs.57,69,800/-. A Flat Buyer Agreement(P-51) of the case file was executed between the parties on 16.08.2012. A perusal of this document at clause 3.3. shows that possession of the allotted unit was to be delivered to the complainants within a period of 36 months from the date of sanction of building plans and on receipt of other approvals as required for start of construction and subject to timely payment by the allottees towards basic price and other charges. It is not the case of the respondent that complainants did not adhere with the schedule of payment and committed default in the same. Rather, it is proved that they have already paid a sum of

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Rs.57,88,807/- i.e. more than 95% of the cost of the unit. Though the period for delivery of possession of the allotted unit has expired in the year 2015 but the respondent failed to deliver the possession of the allotted unit to the complainants. Moreover, the allotted dwelling unit of the complainants was under construction linked plan. The respondent was required to deliver the possession of the allotted unit within the stipulated period as per clause 3.3 of BBA dated 16.8.2012. There is nothing on record to suggest that allotted unit of the complainants is complete and when possession of the same would be delivered to them. A period of more than 8 years has already expired and there is inordinate delay in handing over the possession of the allotted unit to the complainants which amounts to deficiency in service. In case **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors(2018) 5 SCC 442**, it was held by the Hon'ble apex court of the land that a person cannot be made to wait indefinitely for possession of the plot allotted to him and is entitled to seek refund of the amount paid by him alongwith compensation. Though there is a clause in the flat buyer agreement Annexure I and which bars taking action by the complainant against the respondent but the same is not attracted in the case in hand. A similar question arose for consideration before the Hon'ble apex court of the land in case **Central Inland Water Transport Corporation Limited and Ors Vs Brojo Nath Ganguly and Ors. and others (1986) 3SCC 156** and wherein it was observed that under:

"..... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties, who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court

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can, visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction

.....These cases can neither be enumerated nor fully illustrated. This court must judge each case on its own facts and circumstances".

Then, it was also observed in case *Pioneer Urban Land & Infrastructure Ltd Vs Govindan Raghvan in Civil Appeal No.12238 of 2018* decided on 02.04.2019 by the Hon'ble apex court of the land that the terms of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted lines, on a contract framed by the builder. The contractual terms of agreement dated 16.08.2012 are ex- facie one-sided, unfair and unreasonable. The incorporation of such one-sided clause as mentioned above in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats/plots by the builder. So, in such a situation, the respondent/promoter can not seek to bind the complainants with such one-sided contractual terms. Hence issue No. I & II are answered accordingly.

7. Thus, in view of the material facts brought on record, the issue No.III is held in favour of the complainants. Consequently, the following directions are issued to the respondent:

- i) To refund the entire amount of Rs.57,88,807/- alongwith interest at the prescribed rate i.e. 10.35p.a. from the date of

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each payment till the date the amount is refunded to the complainants in terms of this order


- ii) Respondent shall also pay Rs.20,000/- as compensation inclusive of Rs.5,000/- as cost of litigation to the complainants for mental agony, harassment undergone by them.

8. The payments in terms of this order shall be made by the respondent to the complainants within a period of 90 days from the date of this order.

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

11. Let the file be consigned to the Registry.

15.10.2019


(S.C. Goyal)
Adjudicating Officer, 15/10/19
Haryana Real Estate Regulatory Authority
Gurugram