



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana
सिविल लाईंस गुरुग्राम हरियाणा

नया पी.डब्ल्यू.डी. विश्राम गृह.

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 2000/2019
Date of Decision : 08.02.2021

Avtar Singh,(ii) Harpreet Singh (iii) Mrs. Randeep Kaur
all residents of house No.11C, Tower-6, Bellevue
Central Park-2, Sector 48, Sohna Road,
Gurugram-122001

Complainants

V/s

(i) M/s Godrej Premium Builders Pvt Ltd
Godrej Bhawan, 4th Floor, 4-A. Home Street Fort,
Mumbai.
(ii)M/s Magic Info Solutions Pvt. Ltd.
D-13, Defence Colony, New Delhi-110024

Respondents

Complaint under section 31
of the Real Estate(Regulation
and Development) Act, 2016

Argued by:

For Complainants:
For Respondents:

Shri Sanjeev Sharma, Advocate
Shri . Kapil Madan, Advocate
(through Video Conferencing)

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 Mr. Avtar Singh & Ors seeking refund of Rs.38,12,046/- deposited with the respondents for booking a flat bearing N.706, 7th floor, L-Tower in their project known as "Godrej Summit" Sector 104, Gurugram for a sum of Rs.1,52,47,560/- besides taxes etc. on account of violation of obligations of the respondents/promoters under

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section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"Godrej Summit" Sector 104, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	L-706, 7 th floor
V.	Tower No. / Block No.	L
VI	Size of the unit (super area)	Measuring 1844 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(original)	21.01.2015
XI	Date of Allotment(original)	12.03.2015
XII	Date of execution of ABA (copy of ABA be enclosed as annexure-B)	18.03.2015
XIII	Due date of possession as per ABA	18.09.2018
XIV	Delay in handing over possession till date	More than one year
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 4.3 of Apartment Buyer Agreement @ Rs.5/- per sq feet.
Payment details		
XVI	Total sale consideration	Rs.1,52, 47,560/
XVII	Total amount paid by the complainants	Rs.38, 12,046/-

2. Brief facts of the case can be detailed as under:

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A project known by the name of Godrej Summit situated in Sector 104, Gurugram was to be developed by the respondents as a joint-venture. The complainants coming to know about the same decided to book a flat in it. On 17.01.2015 they booked a flat as mentioned above in the project of the respondents by paying a sum of Rs.1,03,780/- vide cheque bearing No.97165 dated 17.01.2015. So, in pursuant to their request, the respondents allotted an apartment bearing No.706, 7th floor in Tower-L vide allotment letter dated Annex.11 dated 12.03.2015. A Builder Buyer Agreement was executed between the parties on 18.03.2015 as Annex A-13. So, in pursuant to that the complainants started depositing various amounts towards the allotment of the unit and paid more than Rs.38,00,000/-. It is the case of the complainants that they were made to understand by the respondents that their unit would be ready by December, 2017. Though they visited the site but were not allowed to do so. They again enquired about the status of the construction and were informed that the unit would be ready for occupation by March, 2018. It is further the case of the complainants that when it transpired that the possession of the allotted unit would not be delivered by the due date then they expressed a concern and contacted the officials of the respondents. So, ultimately, they decided to withdraw from the project and requested for refund of the amount deposited with the respondents against the allotment of the unit. Though a number of efforts in this regard were made but nothing materialised. So, on these broad averments, the complainants filed the present complaint seeking refund of the amount deposited with the respondents besides interest and compensation.

3. But the case of the respondents as set up in the written reply is though the complainants booked an apartment in their project on 21.01.2015 but that was under a construction linked plan. It was denied that there was any delay in completing the construction of the project in which the unit of the complainants was located. In fact, the construction of that unit was going on in full swings and that tower was completed and after obtaining the occupation certificate on 26.12.2018, its possession was offered to the complainants on 21.01.2019. It was pleaded that it were the complainants who committed default in various payments to the respondent. Moreover, the unit in question was allotted to them under the Construction Linked Plan and they did not deposit the amount due as per the schedule given in the Apartment Buyer

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Agreement dated 18.03.2015. It was pleaded that it were the complainants ever asked for refund of the deposited amount and are entitled for the same.

4. All other averments made in the complaint were denied in toto.

5. After hearing both the parties and perusing the case file, the learned Authority vide its order dated 14.03.2019 directed the complainants to pay the balance amount within 30 days for taking possession of the allotted unit failing which it was directed to the respondents to forfeit 10% of the sale consideration and refund the remaining amount to them.

6. Feeling aggrieved with the same, both the respondents filed two separate appeals before the learned Appellate Tribunal and who vide orders dated 02.07.2019 set aside that order and directed the complaint to be transferred to this forum and deal with the same in accordance with law.

7. So, in pursuant to the directions' passed by the Hon'ble Appellate Tribunal, both the parties put in appearance and filed amended pleadings reiterating their earlier version.

8. I have heard the learned counsel for both the parties and have also perused the case file as well as written submissions filed by them.

9. Admitted facts of the case are that in pursuant to booking of flat by the complainants on 17.01.2015 by paying a sum of Rs.1,03,780/-, an Apartment Buyer's Agreement dated 18.03.2015 as Annexure 13 was executed between the parties. The due date of possession of the allotted unit to the complainants was December, 2017/March 2018. It is also not in dispute that in pursuance to booking of residential unit, the complainants starting depositing various amounts towards the allotted unit and they deposited a sum of Rs.38,12,046/- in all against the total sale consideration of Rs.1,52,47,560/-. It is their case that since the allotted unit was not ready and its possession was not going to be offered to them, so they withdraw from the project and sought refund of the amount deposited by them with the respondents. In this regard, besides referring to the pleadings before and after the amendment, a reference has been made to emails Annexure A-17 Annexure A 20 send by the complainants to the respondents withdrawing from the project and seeking refund of the amount deposited with them, It has been argued on behalf of the complainants that since the respondents failed to complete the project by the due date and

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offer possession of the allotted unit, so they have no alternative but to withdraw from the project and seek refund of the amount already deposited by them.

10. But on the other hand, the contention of the respondents' is otherwise and who took a plea that though allotment of the residential unit was made to the complainants on 12.03.2015 vide allotment letter Annexure C but possession of the same was to be offered to them by 11.09.2018. After completion the construction of other towers, the possession of allotted units was given to more than 300 buyers and who are enjoying the amenities. Moreover, after completion of construction of the project in which the unit to the complainants was located, the respondents applied for getting occupation certificate on 21.03.2018 with the Director of Town and Country Planning, Govt of Haryana. It was received by them on 26.12.2018 and the possession of the allotted unit was offered to the complainants on 21.01.2019 vide Annexure H. Even, the complainants were offered a sum of Rs.5,00,000/- as compensation as a goodwill gesture and to uphold their interest by the respondents. It was denied that there was any delay in completion of the project and the respondent were fault at any time. In fact, the complainants are taking benefit of their own wrongs and the complaint filed by them is not maintainable.

11. It is not disputed that in pursuant to allotment of a residential unit to the complainants vide letter dated 12.03.2015 Annexure C for a sum of Rs.1,52,47,560, the same led to execution of Apartment Buyer's Agreement Annexure D on 18.03.2015 between the parties to the dispute. The due date for completion of the project and offer of possession of the allotted unit to the complainants was 36 months with a grace period of 6 months as per clause 4.2 of that document. It is not disputed that the complainants starting depositing various amounts towards the allotment of unit and paid total sum of Rs.38,12,046/- at different times. It is the case of the complainants that since the construction of the allotted was not completed by the respondents within the stipulated period and it was not going on as per the schedule being construction linked plan, so they opted for withdrawal from that project in July,2018 and asked for refund. In this regard, a reference has been made to emails Annexure 17 to Annexure 20 send by the complainants to the respondents. Even the authenticity of these emails is confirmed from the

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emails dated 25.09.2018, 01.10.2018 and 16.04.2019 respectively placed on the file. A perusal of email dated 16.04.2019 sent by the respondents to the complainants make the things clear that which may reproduced as under:

Dear Mr Avtar Singh

This has reference to your request on refund as per HRERA ORDER; There is a housing loan have been opted by you from HDFC Bank Ltd. to facilitate the settlement of payments. We have issued TPA, PTM and other relevant document in this regard to bank on your request. Now, to commence the refund process we require No Due Certificate and loan closure letter from bank alongwith all original documents issued towards loan facilitation. So, that we can process your refund as soon as possible.

Mr Brijesh(Legal): Please take note on this bank loan matter at your end.

Warm regards

P.Muthupandi.

12. It is evident from a perusal of the above emails that the respondents were processing the case of the claimants for refund and that is why they required no due certificate from the financial institution/banker alongwith original documents. So, the plea of the respondents that the claimants were at fault and they completed the project in time and offered the possession of the allotted unit to them in time is untenable. Though during the course of written submissions, they offered a sum of Rs.5,00,000/- as goodwill gesture so as to maintain their reputation but whether that amount is sufficient to compensate the complainants and particularly when they withdrew from the project and refused to take possession of the allotted unit. The answer is in the negative A reference in this regard may also be made to the provision of Section 18 of Real Estate(Regulation and Development)Act, 2016 which provides as under:

If the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or as the case may be duly completed by the date specified therein, he shall be liable on demand to the allottees, in case, the allottee wishes to withdraw from the project with prejudice to any remedy available to return the amount received by him in respect of that apartment, plot, building, as the case may, with interest at such rate, as may be prescribed, in this behalf including compensation in the manner as provided under this Act.

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13. Further, keeping in view these provisions, the Government of Haryana vide Gazette Notification dated 05.12.2018 issued on behalf of the Real Estate Regulatory Authority, Gurugram contains provisions for refund of earnest money and the same provides that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it not permissible in law to forfeit any amount beyond a reasonable amount, unless, it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. This view was also 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 and is based on the views 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 Siddique and & Ors. Civil Appeal No.7266 of 2009** decided on 01.12.2015 and **Balmer Lawrie and Co. and Ors Vs Partha Sarathi Sen Roy & Ors Civil Appeal NO.419-426 of 2004** decided on 20.02.20213. So, the plea of the respondent that the claimants are not entitled to any amount as refund after withdrawing from the project is untenable.

14. Faced with this situation, it is pleaded on behalf of the respondents that as per provision of the ABA Annexure D, the claimants are not entitled to refund of the amount deposited with them and they are bound by terms embodied in it. But again the plea advanced in this regard is devoid of merit. In cases of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725** and followed in **Wg Cdr. Ariful Rahman Khan & Others Vs DLF Southern Homes Pvt Ltd. 2020, SCC online SC 667**, it was held by the Hon'ble Apex Court of the land that when the respondent/builder failed to complete the project in time and deliver the possession of the allotted unit to the complainant as per allotment letter or the apartment buyer agreement, then the allottee has a right to ask for refund if the possession is inordinately delayed. Then in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, the Hon'ble Apex Court allowed the refund of the amount deposited by the allottees with the developer besides interest at the rate of 9% p.a. when it was proved that there was delay in handing over the possession of the allotted unit. So, in such a situation, the respondent-promoters cannot seek to bind the complainants

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with one sided contractual obligations nor can ask them to wait for an offer of possession indefinitely after the due date has expired.

15. Though it is pleaded on behalf of the respondent that possession of the allotted unit has already been offered to the complainants on 21.01.2019 vide Annexure H and they are bound to take its possession but the plea advanced in this regard is devoid of merit. When the due date of possession has already expired, then the developer cannot force an allottee to take possession on payment of remaining sale consideration. A similar situation arose in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others(supra)** and wherein it was held by the Hon'ble Apex Court that the allottees cannot be made to wait indefinitely for possession of the apartment allotted to them nor they can be bound to take the apartments in alternative project. So, the plea taken by the respondents in this regard is devoid of merit.

16. Thus, in view of my discussion above and taking into consideration all the material facts brought on the record by both the parties, it is held that the claimants are entitled for refund of the amount deposited with the respondents (less 10% of the total sale consideration of the allotted unit) besides interest. Consequently, the following directions are hereby ordered to be issued to the respondents:

- i) To refund the entire amount of Rs.38,12,046/- after deducting 10% of the total sale consideration towards earnest money to the complainants.
- ii) The respondents are also liable to pay interest at the prescribed rate i.e. 9.3% p.a. on the said amount of Rs.38,12,046/- from the date of cancellation i.e. March, 2018 till the date of actual payment.

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

18. Hence, in view of my discussion detailed above, the complaint filed by the complainants against the respondents is ordered to be disposed off accordingly.

19. File be consigned to the Registry.

08.02.2021


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