



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

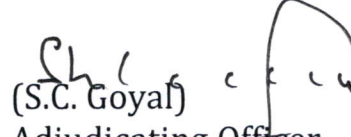
New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Monday and 15.02.2021
Complaint No.	CR/3933/131/2018 Sudip Roy VS Cosmos Infra Engineering Pvt Ltd
Complainant	Sudip Roy
Represented through	In person.
Respondent	Cosmos Infra Engineering Pvt Ltd
Respondent Represented through	Shri. Varinder Singh, Adv
Last date of hearing	
Proceeding Recorded by	Pawan Sharma

Proceedings

Vide separate order of even date, allowing the complaint pronounced, signed and dated.


(S.C. Goyal)
Adjudicating Officer
15.02.2021



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; HARYANA REAL ESTATE REGULATORY AUTHORITY
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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. : 131/2018
Date of Decision : 15.02.2021**

**Sudip Roy S/o Shri Piyush Kanti Roy
R/o 13A-09 The Establishment Bangsar,
Jalan Ang Seng, Brickfields, 50470
Kuala Lumpur, Wilaya Persekutuan, Kuala Lumpur,
(MAYASIA)**

Complainant

V/s

**(i) M/s Cosmos Infra Engineering(India) Pvt Limited
5A,C D 5th Floor Vandana Building
11, Tolstoy Marg, New Delhi.
(ii) M/s Shivnandan Builtech Pvt Ltd.
4,Battery Lane, Civil Lines, Delhi-110054**

Respondents

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

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Argued by:

**For Complainant:
For Respondent No.1
For Respondent No. II**

**Ms Lakshmi Vishvkarma, Advocate
Shri Virender Singh, Advocate
None**

**She - ORDER
15/2/2021**

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 Shri Sudip Roy seeking refund of Rs.52,73,405/- deposited with the respondents for booking a flat bearing- C-1002, measuring 1970 sq. ft. in its project known as 'COSMO EXPRESS 99', situated in Sector 99, Gurugram for a sum of Rs.1,03,19,886/- besides taxes etc on account of violation of obligations of the respondents/promoters under section 11(4) of the Real Estate(Regulation & 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	"COSMO EXPRESS-99" Sector 99, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	C-1002 & C-1101
V.	Tower No. / Block No.	M
VI.	Size of the unit (super area)	Measuring 1970 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)	03.01.2013
XI.	Date of Allotment(original)	15.03.2014

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XII	Date of execution of BBA (copy of BBA be enclosed as annexure-B)	20.08.2013
XIII	Due date of possession as per BBA	19.03.2018
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	Rs. 5/- per sq ft per month of the super area

Payment details

XVI	Total sale consideration	Rs. 103,19,886/-
XVII	Total amount paid by the complainant for two units	Rs.1,05,46,806/- (Rs.52,73,405/-)

Brief facts of the case can be detailed as under:

The complainant coming to know about the above mentioned project of the respondents booked two units with them on 15.03.2013 for a total sale consideration of Rs.2,06,39,772/-by paying a sum of Rs. 28,10,693 on 01.03.2013 and Rs.24,62,708/- on 12.02.2014 respectively and which led to execution of a builder buyer agreement Annexure II dated 20.08.2013. In pursuant to execution of that document, the complainant started depositing various amounts and paid a total sum of Rs.1,05,46,806 with the respondents. The possession of the allotted units was to be delivered to the complainant by 19.03.2018. It is the case of the complainant that there was delay in completion of the project and which led to his withdrawal from the project and seeking refund of the amount deposited with the respondents besides interest and compensation.

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3. But the case of the respondents as set up in the written reply is that though the complainant was allotted the units in question but he is an investor and the complaint filed by him is not maintainable. He also booked flat bearing No.401 with the respondents. The units in question were booked under possession linked plan. The complainant failed to pay as per the schedule given in the builder buyer agreement. It was denied that the respondents failed to complete the project and offer possession of the allotted unit in time. Moreover, the claimant cannot be allowed to take benefit of his own wrongs and being defaulter, he is not entitled for refund of the amount deposited with the respondents.

4. After hearing for both the parties and perusing the case file, the Hon'ble Authority vide its order dated 14.06.2018 allowed delayed possession charges of the allotted units to the complainant with a direction to him to make full payment to the respondents/builder as per terms and conditions of the agreement. Feeling aggrieved with the same, he filed an appeal before the Haryana Real Estate Appellate Tribunal, Chandigarh and who vide its order dated 10.05.2019 allowed the same and directed this forum to adjudicate the complaint in accordance with law.

5. After both the parties put in appearance, they filed amended pleadings and reiterated their earlier version.

6. I have heard the learned counsel for both the parties and have perused the written submissions placed on file

7. On 08.01.2020 when the case was fixed for arguments, it transpired that flat bearing No. C-1101 was assigned by the complainant in favour of Mr. Arun Kapoor, a resident of Lajpat Nagar, New Delhi. So the complainant was directed to file an affidavit and document, if any, in this regard. The

complainant placed on file a copy of transfer of that flat in favour of Mr. Arun

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Kapoor alongwith an affidavit dated 27.01.2020. So, in view of those documents, it is proved that the claimant has no claim with regard to that flat bearing No.C-1101 and seek refund of the amount deposited with the respondents. So, his claim qua that unit against the respondents, is hereby rejected.

8. It is evident from a perusal of the pleadings of the parties as well as written submissions placed on record that though initially, the complainant booked three flats **bearing No. C-401, C-1102 and C-1101** for a sum of Rs.1,03,19,886/- with the respondents, but a builder buyer agreement dated 20.01.2014 was executed only with regard to flats bearing No. C-1002 and C-1101 respectively. The due date of possession of those flats was 20.02.2018. In pursuant to that agreement, the claimant started depositing various amounts and deposited a sum of Rs.52,73,405/- and Rs.52,73,401/- against the allotment of above mentioned two flats. It is the case of the complainant that though he has assigned the rights with regard to unit bearing No. C-1101 in favour of Mr. Arun Kapoor in the year 2014 by receiving a sum of Rs.50,00,000/- and requested for refund of the amount deposited against flat No. C -1102 to the tune of Rs.52,73,405/-. In this regard, besides referring to various emails including Annexure-E and Annexure P/7, a reference has been made to documents Annexure 8 to 10 respectively. Admittedly, the due date of the possession of the allotted unit was February, 2018. But prior to that date, the complainant informed the respondents about cancellation of the allotted unit and seeking refund from them. No concrete reply in this regard was received by him. So, in such a situation, when the construction of the allotted unit was not going on as per schedule and the claimant withdrew from the project, then he is entitled to seek refund of the deposited amount from the respondent/builder. Though, it is pleaded on behalf of the respondents while filing written submissions

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that the claim with regard to refund can not be entertained and particularly when the project is near completion and referred to the ratio of law laid down in cases decided by the Hon'ble Authority as **Mapasko Builders Pvt Ltd. Vs Satya Prakash**(Appeal No.236 of 2019, decided on 21.01.2020), **Magic Eye Developers Pvt Ltd. Vs Yogesh Tomar** (Appeal No.138 of 2019, decided on 17.12.2019), **Omaxe Limited Vs Arun Prabha**(Appeal No. 182/2019,decided on 19.12.2019), **Pushpa Gupta and Anr Vs VSR Infratech Pvt Ltd.**(Complaint No.145 of 2018, decided on 27.01.2020)but there is nothing on record to show the extent and stage of construction at the spot of the allotted unit. The best evidence in this regard would have been a report by a local commissioner to prove the extent of stage of construction or some photographs of the project. But neither that was done by the respondents nor there is any other evidence to prove the status of construction of the project at the spot. Even the best evidence would have been filing of a quarterly report of construction of the project before the Hon'ble Authority. But no such effort was made. So, in such a situation, the oral plea with regard to stage of construction of the project in which the allotted unit is located cannot be accepted and is after thought. Hence, the plea advanced in this regard on behalf of respondents being devoid of merit is hereby ordered to be rejected.

9. Faced with this situation, it is pleaded on behalf of respondents that of the Act of 2016 was enacted to balance the interest of consumers and promoters by imposing certain obligations on both. The Authority is empowered not only to monitor the projects but also to ensure their timely completion where the projects are held up or stopped and to take steps so the same are completed in time and the interests of the allottees are protected. There is no dispute about the proposition advanced in this regard on behalf of the respondents. But when the complainant already

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withdrew from the project in the year 2016 and the respondents did not choose to reply to the same, so, in such a situation, he was left with no alternative but to approach the Hon'ble Authority in the year 2018 seeking refund of the amount deposited against the allotted unit besides interest and compensation. So, the pleas advanced in this regard on behalf of the respondents are devoid of merit.

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

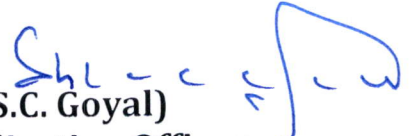
- i) To refund the entire amount of Rs.52,73,405/- besides interest @ 9.3.% p.a. from the date of receipt of each payment till payment of whole amount is paid to the complainant.
- ii) The respondents are also liable to pay a sum of Rs.20,000/- as compensation inclusive of litigation charges to the claimant.

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

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

13. File be consigned to the Registry.

15.02.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
15/2/2021