



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. : 6690/2019

Date of Decision : 24.03.2021

**Tilak Raj S/o Shri Lala Ram
R/o 994, Sector 45,
Gurugram**

Complainant

V/s

**M/s Vigneshwara Developwell Pvt Ltd.
Orchid Centre, Ground & Second Floor
Golf Course Road, Sector 53,
Gurugram**

Respondent

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

Argued by:

For Complainant:

Shri Arun Yadav, Advocate

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 Shri Tilak Raj seeking

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24/3/2021

refund of Rs.41,03,000/- deposited with the respondent-builder upto 12.02.2014 for booking a commercial unit measuring 1500 sq ft. on first floor in 'Cyber Park' situated at Sector 74, Gurugram on account of violation of obligations of the respondent/promoter 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	"Cyber Park" Sector 74, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
Unit related details		
IV.	Unit No. / Plot No.	
V.	Tower No. / Block No.	
VI.	Size of the unit	1500 sq ft
VII.	Size of the unit	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Commercial
X.	Date of booking(original)	01.08.2011
XI.	Date of Allotment(original)	
XII.	Date of execution of Developer Agreement	04.08.2011
XIII.	Due date of possession as per Developer Agreement	60 months from the date of execution of Developer Agreement i.e. August 2016

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XIV	Delay in handing over possession till date	More than five years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said FBA	
Payment details		
XVI	Total sale consideration	Rs.40,00,000/-
XVII	Total amount paid by the complainant	Rs. 41,03,000/-

2. The brief facts of the case are that the project known by the name of 'Cyber Park' situated in Sector 74, Gurugram was to be developed by the respondent. The claimant coming to know about the same booked the above-mentioned unit in it for a total sum of Rs. 40,00,000/- vide P/1. A Developer Agreement Annexure P/2 dated 04.08.2011 was executed between the parties. It is the case of the complainant that on 13.02.2014, the respondent-builder vide its letter detailed above demanded a sum of Rs.,1,03,000/- against service tax and which is also paid to it on 12.02.2011. The possession of the allotted unit was to be delivered to the complainant/allottee within a period of 60 months i.e. in August, 2016. However, despite passage of more than 5 years, the construction at the spot could not take off and there was delay in handing over physical possession of the allotted unit. Even the respondent failed to abide by the terms and conditions mentioned in the Development Agreement and committed default in the same. So, in such a situation, the complainant was left with no other alternative but to withdraw from the project and seek refund of the amount deposited with the respondent-builder besides interest and compensation.

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3. Despite notice, the respondent failed to put in appearance and as such vide order dated 02.02.2021, it was ordered to be proceeded against ex-parte.

4. I have heard the learned counsel for the complainant and have also gone through the case file.

5. A perusal of the pleadings as well as various documents placed on the file by the complainant show that coming to know about the project by the name of 'Cyber Park' situated in Sector 74, Gurugram, the complainant booked a unit in it detailed above on 01.08.2011 for a sum of Rs.40,00,000/-. A Developer Agreement dated 04.08.2011 was executed between the parties and on the basis of which the complainant deposited a total sum of Rs.40,00,000/- against the allotment of unit detailed above. Later on, a sum of Rs.1,03,000/- was also demanded by the respondent-builder vide its letter dated 03.02.2014 and the same was paid by the complainant on 12.02.2014. The possession of the allotted unit was to be delivered to the complainant within a period of 60 months. A reference to Clause 11 of Developer Agreement dated 04.08.2011 is a must and which provides as under:

The deemed possession of the unit is proposed to be delivered by the Developer to the proposed allottee(s) within sixty months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from Govt. Authorities subject to however force majeure circumstances and reasons beyond the control of the Developer. If the completion of Cyber Park is delayed by the reason of non-availability of steel and or cement or other building materials, or water supply or electric power or slow down, strike or due to civil commotion or by reason of war or enemy action or earth quake or any act of God or if non delivery is a result of any act, notice, order, rule or notification of any Governmental or any public or any

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sort, then in any of the aforesaid events, the Developer shall be entitled to reasonable extension of time for delivery of possession of the unit.

6. A perusal of the above mentioned provisions of the agreement entered into between the parties shows that possession of the allotted unit was to be offered to the complainant within a period of 60 months from the date of finalization of the construction and after necessary approvals and sanctions from the Government. So, taking into consideration of that time, the possession of the allotted unit was to be delivered to the complainant by the respondent by August, 2016. However, there is nothing on record that upto the said date either the construction of the unit was in progress and the project was complete. Even there is nothing on record to show that after finalization of the construction, the case of the respondent-builder was pending before the competent authority for approvals and sanctions. For the sake of argument, if that period is taken about a year, then the respondent-builder was required to complete the project and hand over possession of the allotted unit to the complainant by August 2017. But a period of more than four years has expired and the respondent failed to complete the project or offer possession of the allotted unit to the complainant. In cases **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, 2018(5) SCC 442** and followed by another judgement in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by the Hon'ble Apex Court of the land that a person cannot be allowed to wait indefinitely for possession of the unit allotted to him and is entitled to seek refund of amount paid by him alongwith compensation. Moreover, when the due date has already expired then, the allottee cannot be made to wait to seek refund of the amount deposited with the respondent and offer of possession. Then, Section 18 of Real Estate (Regulation and Development) Act, 2016 provides for return of

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24/3/2024

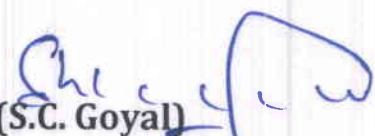
the amount with interest and compensation to the allottee when the developer fails to complete the construction and give possession as per agreement of sale.

7. There is nothing on record to the contrary. So, in such a situation and keeping in view of original booking and expiry of due date, the complainant is entitled to refund of a sum of Rs.41,03,000/-. So, following directions are hereby ordered to be issued to the respondent.

- i) To refund a sum of Rs.41,03,3000/- to the complainant from the date of each payment till the whole amount is paid,
- ii) The above-mentioned amount be paid to the complainant by the respondent besides interest @ 9.30% p.a. from the date of each payment till full amount is paid
- iii) To pay a sum of Rs.10,000/- to the complainant as compensation inclusive of litigation charges
- iv) The above directions be complied with by the respondent within a period of 90 days and failing which legal consequences would follow.

9. File be consigned to the Registry.

24.03.2021


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

24/3/2021

Judgement uploaded on 02.04.2021