



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

सया पी.इन्स्टीट्यूट विभाग

गृह, सिविल लाईन्स, गुरुग्राम, हरियाणा

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 456/2021
Date of Decision : 22.07.2021

Gajendra Singh & Neelam Singh
R/o Flat No.705, Block-C, NCC Meadows, Phase I
Doddabalapur Road,
Yelhanka New Town, Bangalore-560064

Complainants

V/s

- 1. M/s Mascot Buildcon Pvt Ltd.**
294/1, Vishakarma Colony, Opp ICD,MB Road
Lal Kuan,
New Delhi-110044
- 2. M/s Hometown Properties Pvt Ltd.**
294/1, Vishakarma Colony, Opp ICD,MB Road
Lal Kuan,
New Delhi-110044
- 3. Dharam Singh**
H No.2/E, Village Lokhnola, Tehsil & District
Gurugram.

Respondents

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

[Signature]

A.O.

22-7-21

Present:

For Complainants:

Mr. Prabhat Kumar, AR

For Respondents:

Mr. Gulshan Sharma, Advocate

ORDER

This is a complaint filed by Shri Gajendra Singh and Smt. Neelam Singh, (also referred as buyers) under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief 'The Act') read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 against M/s Mascot Buildcon Pvt Ltd. etc. (also called as promoters) seeking directions to refund a sum of Rs.22,24,156/- (Rupees Twenty two lakhs, twenty four thousand, one hundred and fifty six only) alongwith interest @18%p.a. and also Rs.5,00,000/- as compensation.

2. As per case of the complainants, the respondents are private companies engaged in the business of construction and development of residential and commercial projects. Several advertisements as well brochures were issued by the respondents offering an upcoming high street cum retail market in Sector 83, Gurugram, under the name and style of "Oodles Skywalk"


3. The complainants booked a shop measuring 370.50 sq ft. It was assured by the promoters that there will be two towers in the project well described in their brochure. During a meeting held among the complainants, Mr. Sachiv Vaid and Mr. Ashok Gupta, at the office of the respondent company, it was assured that shop will be delivered in time and there will no hidden or extra cost and again that space buyer agreement (in brief SBA) will be executed immediately after taking booking amount. They (complainants) booked a shop in the said project measuring 370.50 sq ft by depositing booking amount of Rs.6,90,000/- on 30.05.2013 which was 20% of total cost of booked shop. ^{Alta} Repeated requests from them, the

respondents executed SBA after a long delay of approximately three years i.e. on 28.04.2016. Moreover, the SBA was executed by respondent No.2(i)(a). (M/s Mascot Buildcon Pvt Ltd.) The complainants came to know later on that the licence was granted in favour of respondent No.2(i)(a) i.e. Shri Dharam Singh S/o Shri Sheesh Ram Singh by Department of Town and Country Planning, Government of Haryana. However, M/s Mascot Buildcon Pvt Ltd have no permission from DTCP, Government of Haryana to execute or sell any commercial unit of the project to the general public.

4. In October, 2017, when the complainants visited the site to see the progress, the same were shocked to see that adjoining project/tower named as 83 Avenue is in abandoned condition, after doing foundation work. It also represented to them earlier that both of the projects will be connected with each other one through sky-bridge over the Central Plaza. Both of these were found as totally different projects.

5. At the time of visit on site, it was known to them that size of shop in question was totally different and highly variable to the allotted shop. There were major deviations in dimensions of shop. They sought clarification from the respondent but the latter refused to accept this fact.

6. On 23.10.2020, they (complainants) issued one notice through email to respondents seeking refund of amount paid by them till date alongwith interest @24% p.a. within 10 days but to of no avail. Constrained in this way, they (complainants) have approached this forum. Citing all this, the complainants have prayed as under:


A.O.
22-7-21

- A. Refund of the entire amount made to the respondent no. 2(i)(a) i.e. Rs. 22,24,156/- along with interest @ 18% p.a. from the date of deposit till the realization of the amount.
 - B. That the respondents be directed to pay an amount of Rs. 5,00,000/- as compensation for harassment and mental agony to the complainant.
 - C. That the respondents be directed to pay the amount of Rs. 5,00,000/- as compensation as prescribed under sections 12 & 18 of the RERA Act.
 - D. Respondents may further be directed to pay an amount of Rs. 1,00,000/- to the complainant towards the cost of litigation.
 - E. That legal action be taken against the promoters/respondents for cheating and fraud done to the allottee as per the law and also for contravening the provisions of the RERA Act 2016, Haryana Development and Regulation of Urban Areas Act, 1975 and Rules 1976.
 - F. That the Hon'ble AO may allow the complainant to file the additional submissions and documents which could not be filed while filing the present complaint.
 - G. To grant any other relief as this Hon'ble Forum deems fit in the peculiar facts and circumstances of the present complaint.
7. Details of the complainants' case in tabular form are reproduced as under:

Project related details		
I.	Name of the project	"OODLES SKYWALK"
II.	Location of the project	Sector 83, Gurugram
III.	Nature of the project	Commercial
Unit related details		
IV.	Unit No. / Plot No.	F-192 First Floor
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 370.50 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	Commercial
X	Date of booking(original)	30.05.2013
XI	Date of Allotment(original)	
XII	Date of execution of SBA (copy of SBA be enclosed)	28.04.2016
XIII	Due date of possession as per SBA	36 months from the start of construction with 3 months grace period
XIV	Delay in handing over possession till date	About four years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause of SBA	-
Payment details		
XVI	Total sale consideration	Rs.34,52,272/-
XVII	Total amount paid by the complainants	Rs.22,24,156/-

8. Respondents filed written reply. It is averred that the complainants have already sought refund of the amount and as per clause 23,24, & 26 of SBA, executed on 28.04.2016, their unit has been cancelled. After necessary deductions, a sum of Rs.18,27,570/- has been refunded to them vide cheque No.342757. On this reason, the respondents claimed that present complaint is liable to be rejected.

9. As described above, the respondents simply prayed for rejection of complaint, stating that in view of SBA, they have already refunded the

amount of complainants, after necessary deductions. Contentions raised by the complainants in their complaint have not been refuted by them i.e. respondents. In this way, it can be presumed that latter do no dispute those contentions. Now, taking the claim of the complainants as true, having facts sworn on oath by filing an affidavit, it can be presumed that the respondents deviated from the agreement and changed/reduced the size of shop, in question without taking the consent of the complainants. SBA was executed after about three years from the date when the complainants were asked to pay booking amount, which was about 20% of sale consideration. The project was not completed within time, as was promised to the complainants. It is apparent from record that SBA was executed between M/s Mascot Buildcon Pvt Ltd. and the complainants, while licence to develop the project in question was granted in favour of Shri Dharam Singh. All this shows that the respondents did not fulfil their promise, as per agreement.

10. Even if the SBA is shown to have been executed on 28.04.2016 i.e. the date when RERA Act had not come into force, it is not the plea of the respondents even that the project was complete and completion certificate was received, on date when the provisions of RERA came into force. In this way, the provisions of RERA are well applicable even in this case.

Section 18 of the Act, 2016 provides as under:

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building -

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) (.....) he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may*


be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

11. Considering facts discussed above, the complaint in hands is allowed and the respondents are directed to refund the amount already paid by the complainants i.e. Rs.22,24,516/- alongwith interest @ 9.30% p.a. from the date of each payment till realising of amount. In addition to this, respondents are also directed to pay a sum of Rs.1,00,000/-(One lac) as litigation expenses and further Rs.1,00,000/-(One lac) as compensation for mental agony and harassment suffered by the complainants. Payment is to be made within a period of 90 days from date of this order.

12. This forum does not think it proper to initiate any criminal proceedings against respondents, as prayed but the complainants are at liberty to approach the appropriate forum/police against the respondents for cheating and fraud (if any) if same think[✓]fit.

13. File be consigned to the Registry.

22.07.2021


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 28.07.2021