



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

Complaint No. : 1574/2019

Date of Decision : 17.08.2021

**Shri Rajender Chaudhry & Sushma Chaudhry
R/o G-4, First Floor
Lajpat Nagar, New Delhi**

Complainants

V/s

**M/s Pareena Infrastructures Pvt Ltd.
C-1(7A), 2nd Floor, Omaxe City Centre,
Sohna Road, Gurugram**

Respondent

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

Present:

For Complainants:

Rajender Chaudhry
Complainant in person

For Respondent:

Mr. Prashant Sheoran, Advocate

ORDER

This is a complaint filed by Shri Rajinder Chaudhary & Sushma Chaudhary (also called as buyers) under Section 31 of The Real

Estate(Regulation and Development) Act, 2016 (hereinafter referred as Act of 2016) read with rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief the Rules of 2017)against M/s Pareena Infrastructures Pvt Ltd.(also called as promoter) seeking directions to the respondent/promoter to refund a sum of Rs.1,17,00,000/-as per Section 18 of Act of the 2016 from the dates of payments till its realisation and compensation amounting Rs.10,00,000/- alongwith litigation expenses of Rs.1,00,000/-.

2. According to complainants, on 27.01.2013, they booked a residential apartment bearing No. 504, Tower-3, measuring 1997 sq ft @ Rs.4896/- per sq ft, in the project of respondent known as "CUBAN RESIDENCES" situated in Sector 99-A, Gurugram. They made initial payments of Rs.8,50,000/- and Rs.11,77,971/-on 12.03.2013 and 03.08.2013 respectively. On receipt of said payments, respondent issued allotment letter dated 26.12.2013. An Apartment Buyer's Agreement(ABA) was executed between them on 14.12.2013. As per clause 3.1 of said agreement, the respondent was obliged to offer possession of allotted apartment to the complainants within a period of 48 months, from the date of signing of ABA. Thereafter, on the request of the complainants, the respondent agreed to reduce the rate from Rs.4896/- per sq ft to Rs.4690/- per sq ft. A fresh ABA was executed between the parties on 14.03.2015.

3. Despite making regular payments towards the booked unit and even after lapse of five years, respondent has failed to offer possession of their unit. They visited the project site several times to check the status of project and also enquired about the progress of the project and wrote many letters but the respondent failed to provide status report as well as the likely date of completion of the project/unit. Respondent failed to

compensate the complainants for delay caused in completion of project. They(complainants) have paid substantial amount i.e. about 90% of total sale consideration. Failing to get positive reply from the respondent, they(complainants) sent legal notice dated 20.03.2019 but to of no effect. Now, they have approached this forum, seeking refund of entire amount with interest, compensation and litigation charges as described above.

4. Details of the complainants' case in tabular form are reproduced as under:

Project related details		
I.	Name of the project	"COBAN RESIDECES"
II.	Location of the project	Sector 99-A, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	504, Type 3BHK.
V.	Tower No. / Block No.	Tower-3
VI	Size of the unit (super area)	Measuring 1997 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)	12.03.2013
XI	Date of Allotment(original)	26.12.2013
XII	Date of execution of ABA (copy of ABA be enclosed)	14.12.2013 and 14.03.2015
XIII	Due date of possession as per ABA	Within 48 months from the date of signing of ABA with six

		months grace period
XIV	Delay in handing over possession till date	More than 6 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
Payment details		
XVI	Total sale consideration	Rs. 93,65,930/-(BSP)plus other charges
XVII	Total amount paid by the complainants	Rs.1,17,00,000/-

5. Respondent contested the claim of the complainants/buyers by filing written reply. It is averred that complainants have concealed material facts, while drafting the complaint. They(complainants) signed the ABA, out of their own free will and are bound by the terms and conditions of same. As per clause 3.1 of ABA, the possession date of the booked unit is four years, from the start of construction or execution of agreement, whichever is later, with grace period of six months. Fresh agreement(ABA) was executed between the parties on 14.03.2015 and thus offer of possession shall be counted from 14.03.2015 and not from 14.12.2013 as claimed by complainants. Even otherwise, it (respondent) is entitled for further extension of time on account of delay due to reason beyond its control.

6. It is further averred by the respondent that complainants as well as other allottees were not making timely payments towards their respective units and thus lack of funds hampered the construction work. The complainants are frequently dragging the respondent by approaching police and other constitutional bodies, levelling baseless allegations,

forcing the respondent to reduce the basic sale price of allotted unit from Rs.4896/- to Rs.4690/- per sq ft. contrary to the terms and conditions of ABA. Such type of tactics on the part of complainants caused obstruction in the execution of the project in question. The complainants have actually paid a sum of Rs.1,05,98,325/- and not Rs.1,17,00,000/- as alleged by them. Despite all this, It (respondent) is still making all endeavours to complete the project and ^{to} hand over possession to the complainants.

7. According to respondent, unit of complainants is located at 5th floor of Tower No.3. Structure work and brick work of that tower is complete. Wall conduit is complete upto 5th floor. Surprisingly, no date of filing is mentioned on written reply filed by the respondent. Even affidavit annexed with the reply is undated. Copy of reply was sent to complainants through email, which shows the date as May 26, 2019. There is no other evidence to verify as how much construction is complete. Stage of construction was not clarified during arguments also. As per complainants, despite their requests, respondent did not give any information about completion of project. In this way, it is presumed that construction is not complete till now.

8. As per clause 3.1. of Agreement, respondent was duty bound to hand over possession within four years of agreement or start of construction work. Even as per respondent, the time of four years started from day of execution of 2nd agreement between the parties i.e. 14.03.2015. Even if, counted from that date, the respondent had to deliver possession till 14.03.2019 Accordingly to reply filed by respondent, only basic structure was complete till filing of reply i.e. on any day in May, 2019. In this way, respondent could not handover possession within promised time. Same is thus, liable to refund amount received from the complainants, in view of Section 18 of the Act.

9. The respondent is, thus, directed to refund amount received from the complainants within 90 days from today with interest @ 9.30% p.a. from the date of each payment, till the whole amount is paid. The respondent is again directed to pay a sum of Rs.1,00,000/- (Rupees one lac) to complainants as costs, inclusive of litigation charges.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
17.08.2021

Judgement uploaded on 18.08.2021