

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

Complaint no. : 5057 of 2019

Date of decision : 24.08.2021

ARJUN VOHRA AND JYOTI VOHRA  
R/O : MA 1/4, GD, Garden Estate,  
MG Road, Gurugram-122002

**Complainants**

Versus

IREO GRACE REALTECH PVT. LTD.  
ADDRESS: 304 Kanchan House,  
Karampura, Commercial Complex  
New Delhi-110015

**Respondent**

**APPEARANCE:**

For Complainants:

Ms Vridhi Sharma ,Adv

For Respondents:

Mr. M. K. Dang and Mr Garvit

Gupta, Advocates


**ORDER**

This is a compliant is filed by Sh. Arjun Vohra and Jyoti Vohra (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/promoter.

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2. The particulars of the project in tabular form are as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	"The Corridors", Sector 674, Gurugram, Haryana
2.	Project area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	05 of 2013 dated 21.02.2013 valid up to 20.02.2021
5.	Name of licensee	M/s Precision Realtors Pvt. Ltd.
6.	RERA Registered/ not registered	Registered in 3 Phases vide no, 377 of 2017 dated 07.12.2017, 378 of 2017 dated 07.12.2017 & 379 of 2017 dated 07.12.2017
7.	RERA Registration Valid upto	Registered vide no.377 of 2017 valid up to 30.06.2020 and 378 of 2017 valid up to 30.06.2020 Registered vide no.379 of 2017 valid up to 31.12.2023
<b>UNIT DETAILS</b>		
1.	Unit no.	D 5-304 (third floor) (Pg. No 36 of complaint )

  
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2.	Unit measuring	2415.98 sq. ft. (Page No.36)
3.	Date of Booking	04.03.2013
4.	Date of Provisional Allotment	07.08.2013 (Pg. of 45 of reply) (Not received by complainant)
5.	Date of Buyer's Agreement	Not executed (Annexure: 9, Pg. No 29 of compliant )
<b>PAYMENT DETAILS</b>		
6.	Total sale consideration	Rs 2,49,60,426 Rs /-
7.	Amount paid by the complainants	Rs 20,00,000 /-

3. According to the complainants, they jointly applied for allotment of an apartment admeasuring 2415.98 sq. ft with 2 covered car parking spaces in respondent's project "**The Corridors**", situated at sector-67A, Gurugram vide application for provisional registration dated 04.03.2013 and made payment of Rs 20,00,000/- as booking amount. The respondent failed to provide the project related details and upon observing the rude behaviour of respondent's officials, the complainants proceeded to withdraw application vide withdrawal letter dated 20.03.2013 followed by letters dated 18.04.2013 and 1.07.2013. Despite the fact that complainants requested for withdrawal from the booking, the respondent raised demands for payment of instalments. They (complainants) never received any allotment letter with respect to the booking which is evident from email of



respondent dated 29.08.2013 (Annexure 8) wherein respondent admitted that the allotment letter was returned back by courier.

4. The respondent sent three sets of buyer's agreements on 09.12.2013 in printed booklet format, for unit No. 304 in Tower D5, admeasuring 2415.98 sq. ft for a total consideration of Rs 2,49,60,426/- including BSP, EDC, IDC etc. The complainants did not sign the buyer's agreement and again vide letter dated 20.12.2013 sought cancellation of booking and refund of booking amount with interest.
5. The respondent has even scrapped the construction of Tower D of the project. They ( complainants) sought cancellation of their application within 20 days of booking and have been regularly following up with respondent but to of no avail.
6. Alleging all this, complainants filed present complaint, seeking refund of entire amount of Rs 20,00,000/- alongwith interest at prescribed rate and litigation cost of Rs 75,000/-.
7. The respondent contested the complaint, by filing a written reply dated 25.03.2021. The respondent raised preliminary objection with regard to maintainability of present complaint contending that the application for provisional registration was signed between complainants and respondent prior to the enactment of the Real Estate (Regulation and Development) Act 2016 and the provisions laid down in the Act cannot be applied retrospectively. It is the further contention of respondent that complainants have no locus standi to file present complaint.

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8. According to respondent, the complainants failed to sign booking form which was sent to them vide letter dated 26.06.2013 and have also to pay the instalment of Rs 28,56,736/- and a cheque of complainants for Rs 18,55,581/- was dishonoured on account of 'payment stopped by the drawer.'
9. A unit no. D5-03-304 has been allotted to complainants vide offer of allotment letter dated 07.08.2013. It (respondent) sent three copies of buyer's agreement vide letter dated 09.12.2013 but complainants failed to execute the same. Despite several reminders, complainants have not paid the due amount till date.
10. Number of withdrawal letters sent by the complainants to the respondent and the letters attached with complaint are fabricated and bogus. It is further averred that on the one hand the complainants are stating that they sent withdrawal letters but on the other hand, they issued a cheque dated 11.07.2013 towards part payment of total sale consideration. Vide email dated 28.04.2014, they were informed that they are bound to execute the documents, as per respondent's format and any withdrawal would result in forfeiture of deposited amount.
11. It is further contended by respondent that complainants are trying to mislead by raising allegations of scrapping of Tower D. As per Clause 43 of Booking form and clause 13.3. of buyer's agreement, the possession was supposed to be offered within 42 months plus 180 days grace period from the date of approval of building plans. The time limit was to be computed

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from the date of receipt of requisite approvals and the same was subject to force majeure circumstances. The environmental clearance was granted on 12.12.2013 and fire safety plan was granted on 27.11.2014. In terms of agreement proposed time has to be computed from 27.11.2014 and due date of offer of possession would be 27.11.2019.

12. Moreover, the State Environmental Assessment Authority, Haryana prohibited respondent from making any construction under right of way of the high-tension wire area for the tower in question. It affected some part of the project and respondent had to get those HT lines removed and relocated. The overhead tension wires were removed only by February 2016 and it (respondent) informed all allottees including complainant about the same vide letter dated 04.08.20016 but no objections were ever received from the complainants.

Due to government notification with regard to demonetisation, the work at site got halted for 7-8 months as bulk of the labour being unpaid went to their hometown which resulted into shortage of labour. Also due to the orders of the National Green Tribunal in the year 2015, 2016, 2017, and 2018, the contractors of the respondent could not undertake construction for 3-4 months and construction was very badly affected for 6-12 months due to the orders. It has been contended again that due to default in payments by other allottees, the project got badly affected and also due to heavy rainfall in Gurugram in the year 2016, the construction activities were delayed. The outbreak of Covid-19 also

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resulted in significant delay in completion of the construction of the projects in India. The respondent requested to dismiss the complaint, with cost.

13. So far as preliminary objection regarding maintainability of present complaint on the ground that provisional registration of the complainant was done prior to the enactment of the Act, 2016 is concerned, it is not the plea of the respondent that same had completed the project till 01.05.2017 or made application under Rule 16 of Haryana Development and Regulation of Urban Areas Rules, 1976 or under sub-Code 4.10 of the Haryana Building Code 2017 to the competent authority or again that the same had got part completion/completion or occupation certificate of the project in question till the publication of Rules, 2017. In this way, the project of the respondent in which the complainant applied for a unit is termed as "Ongoing project" in view of Rule 2(o) of Rules, 2017.

According to proviso added to Section 3(1) of the Act, respondent/promoter was duty bound to apply for registration of its project within three months from the date of commencement of this Act. Although, it is not clarified as to whether the respondent applied for registration of its project or not, I presume that the respondent had applied for its registration within a period of three months as mentioned above and provisions of this Act are squarely applicable in this case. I do not find any substance in preliminary objection raised by the respondent as described above.

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Clause 7.5 of Annexure A with Rules 2017 prescribes that the allottees shall have the right to cancel/withdraw his allotment in the project as provided in the Act...provided that where the allottee proposed to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment and interest component on the delayed payment.

14. But there is no dispute that the complainant had merely made an application to the respondent for his provisional registration in the project of latter i.e. respondent and paid a sum of Rs.20,00,000/- as booking amount. He cannot be termed as "Allottee" as enunciated in clause 7.5 described above. Section 2(d) defines allottee in relation to real estate project as a person to whom a plot/apartment or building, as the case may, has been allotted, sold or otherwise transferred by the promoter. No unit i.e. plot/apartment was allotted/sold/transferred in favour of the complainant till the same applied for withdrawal of amount.

Clause 7.6 of Rules, 2017 provides for return of amount to the buyer by the promoter as received by him in respect of plot/unit/apartment alongwith interest at rate prescribed in rules including compensation within 90 days of it becoming due but in case when the promoter failed to complete or is unable to give possession of plot/unit/apartment.....

(I) In accordance with terms of this agreement, it will complete by the date specified<sup>1</sup> in part 7.1.

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(II) Due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act

15. Although, it is also plea of complainants that the promoter failed to complete the project in time, their claims rests on ground that shortly i.e. within 20 days after application of booking, they opted to withdraw from the project.

16. In such a situation, polemic question to be answered by this forum, is whether complainants, seeking direction to the respondent/builder to return the amount, when no unit was allotted to them (complainants) and there was no BBA between the parties, is maintainable before this forum or not?

The Real Estate (Regulation and Development) Act, 2016 is a special Act passed by the Parliament with specific object, which is summarised as under:

- (I) To regulate and promote real estate sector
- (II) To ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner;
- (III) To protect the interest of consumers in the real estate sector
- (IV) To establish an adjudication mechanism
- (V) To establish the appellate tribunal to hear appeals from the decisions.....

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It is clear from the preamble of the Act, as reproduced above, this Act was passed specially to ensure sale of plot/apartment in an efficient and transparent manner and also to protect the interest of consumers, by regulating the real estate sector. Being a special Act, it overrides other laws in vogue.


17. Coming to the facts of this case, there is no denial that the complainant paid an amount of Rs.20,00,000/- as booking amount for an apartment. No agreement was entered between the parties and no allotment was made in favour of the complainants when latter decided to withdraw their amount and applied for withdrawal. Even as per respondent, it was application filed by complainants seeking provisional registration in project being developed by it (respondent). Despite refunding the amount, the respondent sent draft of BBA to complainants but the latter declined to sign the same. As there was no contract between the parties till the time, complainants opted to withdraw their application for provisional registration. The complainants could not be compelled to enter into contract, as was done by respondent in this case.

18. In circumstances as described above, in my opinion, the respondent was not entitled to retain the amount, rather was duty bound to return it to the complainants, when demanded by latter. This complaint is thus, allowed. Respondent is directed to refund amount of Rs.20,00,000/- to complainants

within 90 days of this order alongwith interest @ 9.30% p.a. from the date of receipt of same, till its realisation. Respondent is burdened with cost of Rs.50,000/- to be paid to the complainants.

19. File be consigned to the registry.

24.08.2021

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

Judgement uploaded on 03.09.2021