



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

गृह. सिविल लाईस गुरुग्राम हरियाणा

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

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

Complaint No. : 2148/2018
Date of Decision : 31.08.2021

**Shri Rajesh Deshwal & Mrs Purnima Singh
R/o Flat No.501, La Lagune, Sector-54
Golf Course Road, Gurugram-122011**

Complainants

V/s

**M/s Native Buildcon Pvt Ltd.
BPTP Crest Plot No.-15, Udyog Vihar,
Phase-IV, Gurugram, -122015**

Respondent

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

Present:

**For Complainant:
For Respondent:**

**Mr. K.K Kohli, Advocate
Ms Sakshi Khattar, Advocate**

ORDER

This is a complaint filed by Shri Rajesh Deshwal and Mrs Purnima 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)

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Rules, 2017 against M/s Native Buildcon Pvt Ltd. etc.(also called as promoter) seeking, directions for refund of Rs.1,63,93,151/- alongwith interest @18%p.a. etc.

2. According to the complainants, they applied for booking of a residential unit in the project of the respondent known as "Visionnaire Villas " Sector 70-A, Gurugram. Initially they paid a sum of Rs.25,00,000/- on 25.05.2013 towards booking of unit bearing No.B-167, measuring 5328 sq ft. on 290 sq yds plot. Said unit was allotted to them on 07.06.2013, Buyer's Agreement(BA) or Villa Buyer's Agreement (VBA) between the parties was executed on 28.10.2013. on 07.11.2013, the respondent raised a demand of Rs.1,03,33,431/- and by availing home loan, they paid this amount in three instalments. The total cost of unit in question was agreed upon Rs.3,99,97,760/-. Out of which, they have paid an amount of Rs.1,63,31,151/- before 26.12.2013.

3. As per clause 5.1 of the Buyer's Agreement, respondent committed to offer possession of booked unit before Oct.2016. Complainants arranged loan of Rs.3,00,0000/-(Rupees three crores) from HDFC Bank and Tripartite Agreement among the respective parties was executed in Nov.2015. As per said agreement, the respondent agreed to pay pre-EMIs till offer of possession to the complainants. Though the respondent paid instalment of Pre-EMIs till Nov. 2015, but stopped paying further instalments of pre-EMIs. Despite writing several emails and also making verbal requests, the respondent neither paid further instalments of pre-EMIs nor offered possession of booked unit.

4. After visiting the site of project, the complainants were shocked to see that project was lying in a raw and in a state of desolate, utter neglect and abandonment despite payment of 50% of total sale consideration.

They have fulfilled their obligations and made all necessary payments against the booked unit but the respondent miserably failed to discharge their obligations and thus violated the terms and conditions of Villa Buyer's Agreement and also the provisions of the Act.

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

Project related details		
I.	Name of the project	"Visionnaire Villas"
II.	Location of the project	Sector 70-A, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	B-167
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 5328 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)	25.05.2013
XI.	Date of Allotment(original)	07.06.2013
XII.	Date of execution of VBA (copy of VBA be enclosed)	28.10.2013
XIII.	Due date of possession as per VBA	Before 26 th Oct. 2016
XIV.	Delay in handing over possession till date	

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XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause	
Payment details		
XVI	Total sale consideration	Rs.3,99,97,760/-
XVII	Total amount paid by the complainants	Rs. 1,63,93,151/-

5. Contesting the claim of the complainants, the respondent raised preliminary objection regarding maintainability of present complaint. It is alleged that Villa Buyer's Agreement was executed between the parties prior to the enactment of the Act of 2016 and hence provisions of this Act cannot be enforced retrospectively. Moreover, clause 16 of VBA provided to refer the matter for arbitration, in the event of any dispute. On these reasons, complaint could not have been filed before this forum.

6. It is again the plea of respondent that the relief sought by the complainants cannot be granted. As per Clause G(2) of application for allotment and further reiterated vide Clause 6.1 of the VBA which provides for delayed penalty in case of delay in delivery of possession. It is further averred by respondent that Section-74 of the Indian Contract Act, 1872 clearly spells out the law regarding sanctity and binding nature of provision ascertaining amount of compensation, provided in the Agreement. Therefore, the complainants, if at all, are only entitled to compensation under Clause 6.1 of the Agreement. Agreement executed prior to the registration of project under RERA shall be binding on the parties. The parties vide clause G(1) of the application for allotment and clause 1.5 of the Villa Buyer's Agreement, duly agreed that subject to force majeure and compliance by the complainants of all the terms and

conditions of buyer's agreement, the respondent proposed to hand over possession of villa within 36 months of date of sanctioning of building plan or execution of VBA, whichever is later, with further period of 180 days of grace period.

7. It is further the case of respondent that project in question i.e. "Visionnaire" has been marred with serious defaults in timely payment of instalments by majority of buyers, which caused major setback to the development work and thus proposed timelines for possession stood diluted. Respondent kept updated/informed the complainants about the status of construction and progress in the unit/project vide emails. Unit in question is being completed as per specifications as well as the Villa Buyer's Agreement. Possession of said unit shall be handed over shortly. Though, the possession of unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of VBA, subject to the 'force majeure event. Clause 1.5 and 5.1 of the VBA, gives the respondent extension of time to complete the project. It was endeavour of respondent to complete the project/unit in a timely manner as per terms and conditions of VBA and hence no default whatsoever has been committed by it.

8. It is not denied by the respondent even that the project in question was neither complete nor any completion certificate had been received till the date when the act came into force. In this way, it was an on-going project and as per section 3(1) of the Act, the developer was duty bound to apply for registration of project within 3 month from date of commencement of the Act. The provisions of the Act are thus applicable to the project in question. So far as provisions of arbitration clause in VBA is concerned, during arguments, even counsel for respondent did not stress on this issue. No such initiation was taken by any of parties. In this way

none of parties appeared serious on the clause of appointment of arbitrator. Moreover, provisions of the Act of 2016 efficaciously deal with rights and obligations of builder as well buyer. Being special act, provisions of the Act get preference over agreement between the parties.

9. As stated earlier the respondent was obliged to handover possession of unit in question within 36 months of execution of VBA which was executed between the parties on 28.10.2013, counting in this way, the date of possession comes to 28.10.2016 or on 28.01.2017 if three months grace period is added. Apparently, the respondent failed to complete the project till this date, what to say offering of its possession.

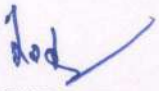
10. So far as, plea of respondent that complainant could claim compensation for delay in possession only as per VBA is concerned, as per learned counsel in complainant it was unilateral provision, inserted as suited to builder when there is specific provision in the Act, in this regard, same will prevail upon terms of VBA.

11. Even as per respondent same was obliged to hand over possession within 36 months of VBA or date of sanction of building plan whichever is later with further 180days of grace period. There is no evidence to verify as when building plans were sanctioned. Taking day of VBA, due date of possession comes to 28.10.2016. No force majeure circumstances or established on record, due to which respondent could claim benefit of aforesaid grace period. It cannot claim benefit of grace period, without compelling circumstances. Project is thus too much delayed. Respondent failed to handover possession of the allotted unit to the complainants in time. The complainants are therefore well within their right to ask for refund of amount, along with interest and compensation. The complaint in hands is thus allowed. Respondent is directed to refund the amounts received from complainants within 90 days from today, along with interest

@ 9.3% per annum from the date of payments till realisation of amount. In addition to this, the respondent is also directed to pay Rs. 1,00,000/- (one lac) as costs to the complainants.

12. File be consigned to the Registry.

31.08.2021


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

Judgement uploaded on 07.09.2021