



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. : 2010/2019
Date of Decision : 27.09.2021

Parmod Kumar Yadav
R/o 887-P, Sector 22B
Gurugram-122015

Sushil Yadav
R/o 887-P, Sector 22B
Gurugram-122015

Complainants

V/s

M/s Agrante Developers Pvt Ltd.
522-524, DLG Tower A
Jasola, New Delhi 110044

Respondent

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

Present:

For Complainants:
For Respondent:

Mr. Sushil Yadav, Advocate
Mr. Tarun Biswas, Advocate

ORDER

This is a complaint filed by Parmod Kumar Yadav and Sushil Yadav(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 Agrante Developers Pvt. Ltd. (also called as developer) seeking directions to the respondent to refund a sum of Rs.28,40,118/- alongwith interest @ 24% p.a. from the dates of payments till its realisation.

2. According to complainants, on 11.03.2014, after going through brochure of respondent about its project "BEETHOVEN'S 8" and also payment plan, they booked a residential unit therein bearing No.H/A/802, admeasuring 1300 sq ft. Said project is located in Sectors 107, Gurugram, Haryana. They paid Rs.7,00,000/- as booking amount and further made payment of Rs.3,55,710/- on 26.04.2014. An Agreement to Sell was executed between them on 30.04.2014. By virtue of clause 4(K), 35 and 42, the respondent agreed to hand over possession of booked apartment within 42 months of signing the agreement i.e. by 30.10.2017. Total sale consideration of booked apartment was fixed as Rs.79,49,500/-, out of which they(complainants) have paid an amount of Rs.28,40,118/- to the respondent.

3. In order to facilitate further payments, they availed loan of Rs.64,00,000/- from HDFC Bank and Quadripartite agreement was signed among the parties on 17.05.2014. Accordingly, some instalments towards due payments were released by HDFC Bank. Through a letter dated 07.10.2017, respondent informed the complainants that project will be completed by the end of 2019, whereas in view of clause 4(K), 35, and 42, respondent had agreed to deliver possession by 30.10.2017. In case of failure of respondent to hand over possession by due date, they (complainants) ^{are} were entitled to get back their deposited amount with interest @7% p.a.

4. With this background, the complainants have approached this forum seeking directions ^{to respondent} for refund of amount of Res.28,40,118/- alongwith interest @ 24%p.a.


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

Project related details		
I.	Name of the project	"Beethoven's8 "
II.	Location of the project	Sectors 107 Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	MINOR H/A 802
V.	Tower No. / Block No.	MINOR H/A
VI	Size of the unit (super area)	Measuring 1300 sq ft
VII	Size of the unit (carpet area)	
VIII	Ratio of carpet area and super area	
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	10.03.2014
XI	Date of Allotment(original)	30.04.2014
XII	Date of execution of BBA (copy of BBA be enclosed)	30.04.2014
XIII	Due date of possession as per ABA	Within 42 months from the date of execution of Agreement to Sell i.e. 30.10.2017

XIV	Delay in handing over possession till date	About two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	
Payment details		
XVI	Total sale consideration	Rs.79,49,500/-
XVII	Total amount paid by the complainants	Rs.28,40,118/-

5. By filing reply, the respondent raised preliminary objection regarding maintainability of present complaint on the ground that licence granted by the competent authority to develop the project has expired in March, 2016, renewal process is still pending, therefore, till the project stands registered, the Authority or Adjudicating Officer has no jurisdiction to entertain this complaint. Moreover, provisions of Act of 2016 are not applicable in this case, same being prospective in nature. Agreement between the parties was entered before the Act of 2016 came in force.

6. It is further contended that though respondent had agreed to hand over possession within 42 months, however, same was subject to force majeure factors such as unprecedented real estate market crash, poor recovery from the existing customers and apart from all, respondent was under constraint because of escalation of EDC, charges and the inability of M/s Sarvaram Infrastructure India Pvt Ltd. to pay their proportionate share of EDC, who actually is the marketing, development and selling right holder of more than 10 acres of licenced land in terms of Development Agreement dated 23.05.2012. According to respondent, all endeavours are being made to complete the project by September, 2020, so as to hand over


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possession to buyers. Whatever delay is caused, it is not intentional or deliberate but because of unforeseen challenges.

7. I have heard ld. counsels for the parties and have gone through the record on file. As described above, the complainants have sought relief against M/s Agrante Developers Pvt. Ltd. but 'agreement to sale' was entered between the complainants & M/s. RMS Estates Pvt. Ltd. It is explained by learned counsel for complainants that Clause 3 of said agreement makes it clear that developer M/s RMS Estates Pvt. Ltd. was to promote market and sale of project while M/s Agrante Reality Ltd. was entitled to allot/market and alienate (sell) apartment and also to collect sale proceeds. The latter was thus liable to his clients. This fact is not disputed on behalf of respondent.

8. So far as preliminary objection about applicability of provisions of Act of 2016 is concerned, true project in question would have been launched before Act of 2016 came into force. Even agreement to sell entered between parties is dated 30th April 2019. It is not denied that said project is still not complete and was carried on after said act was enforced. In this way, it was an ongoing project and developer was liable to get the same registered within 3 months, as prescribed in the act. Provisions of fact of 2016 are squarely applied to project in question also.

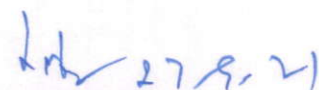
9. It is not disputed by respondent that complainants booked above said unit, possession of which was proposed to be given to the complainants within 42 months of signing of Agreement. Respondent admitted to have received a sum of Rs.28,40,118/- from complainants. In its written reply, respondent disclosed that licence to develop project in question, granted in its favour by the competent authority has expired in March 2016, and renewal process is pending. It is not claimed during final

arguments that licence in this regard has been renewed. As per section 18(1) of act, when promoter fails to complete or unable to give possession of an apartment,----- due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this act, the same (promoter) shall be liable to refund, on demand by the buyer.

8. Considering aforesaid facts and also that respondent failed to complete and handover possession of unit in question to the complainants in time as agreed through 'agreement to sell' and no reasonable explanation is given by respondent in this regard, the complainants are well within their rights to claim refund of amount paid by them.

9. Complaint in hands is thus allowed and respondent is directed to refund amounts i.e. Rs.28,40,118/- received from complainants within 90 days from today, with interest @9.30%p.a. from the date of receipt of each payment till realisation of amount. The respondent is burdened with cost of litigation etc Rs.1,00,000/- to be paid to the complainants.

10. File be consigned to Registry.


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

Judgement uploaded on 06.10.2021.