



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह.सिविल लाईस. गुरुग्राम, हरियाणा

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

Complaint No. : 335/2019
Date of Decision : 28.09.2021

Ms Seema Goel W/o Shri Amit Goel
R/o House No.412, Ground Floor,
Sector-14, Gurugram, Haryana-122001

Shri Amit Goel S/o Chhaju Ram Goel
R/o House No.412, Ground Floor,
Sector-14, Gurugram, Haryana-122001

Complainants

V/s

M/s Ramprastha Promoters & Developers Ltd
114, Sector-44, Gurugram

M/s Blue Bell Protech Pvt Ltd.
C-10, C Block Market, Vasant Vihar,
New Delhi-110057

Respondents

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

Present:

For Complainants:
For Respondents:

Mr. Pawan Kumar, Advocate
Mr Dheeraj Kapoor, Advocate

V.K.
A.O.
28-9-21

ORDER

This is a complaint filed by Ms Seema Goel and Mr. Amit Goel (also referred as buyers) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief Act of 2016) read with Rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief 'Rules') against M/s Ramprastha Promoters & Developers Limited and M/s Blue Bell Protech Pvt Ltd.(also called as developers) seeking directions to the respondents/developers to refund a sum of Rs.62,24,701/- alongwith @ 24%p.a. from the date of deposit.

2. According to complainants, on 14.05.2011 they booked a residential unit in the project of respondent's known as 'SKYZ', Sector 37-D, Gurugram, by paying a sum of Rs.5,74,420/- on 10.05.2011. The respondents issued Allotment letter dated 14.05.2011 offering residential unit bearing No.B-302, 3rd Floor admeasuring 1750 sq ft in the said project for total sale consideration of Rs.71,11,725/-. Till date they have paid a sum of Rs.62,24,701/- to the respondents. The respondents executed Apartment Buyer Agreement(ABA) on 15.10.2011, after expiry of almost five months from the date of first payment.

3. By virtue of clause 15 of said Agreement, respondents assured them to hand over possession by 31.08.2014. After vising the site of project, they enquired from respondents about status of project and the likely date of its completion but no satisfactory response was given by respondent. All this forced them to knock the doors of this forum, through this complaint seeking refund of their deposited amount, with interest.

3. Brief facts of complainant's case in tabular form are reproduced as under:

Project related details		
I.	Name of the project	"SKYZ"
II.	Location of the project	Sector 37-D, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	B-302
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 1750 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)	14.05.2011
XI	Date of Allotment(original)	
XII	Date of execution of ABA	15.10.2011
XIII	Due date of possession as per ABA/SBA	31.08.2014
XIV	Delay in handing over possession till date	More than six 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.71,11,725/-
XVII	Total amount paid by the complainants	Rs. 62,24,701/-

4. Respondents contested the claim of the complainants by filing written reply. Apart from said reply, respondents filed an application seeking rejection of complaint alleging that this forum i.e. Adjudicating Officer has no jurisdiction to try and entertain this complaint. It is averred that prior to 12.09.2019, complaints pertaining to refund, possession, compensation and interest for grievance u/s 12,14, 18 and 19 of the Act of 2016 were required to be filed before adjudicating officer under Rule 29 of Rules, 2017 read with section 31 and 71 of the Act and not before the authority under rule 28. Haryana Real Estate Appellate Tribunal in case Sameer Mahawar Vs M G Housing Pvt Ltd held that authority had no jurisdiction to adjudicate about issues relating to refund. Such complaints were ordered to be transferred to adjudicating officer for decision. Haryana Real Estate(Regulation and Development) Amendment Rules, 2019 were notified on 12.09.2019 amending rules 28 and 29, the authority has given jurisdiction to entertain complaints seeking refund.

5. The High Court of Punjab & Haryana in case Experion Developers Pvt Ltd. Vs State of Haryana and other upheld amendment in Rules. In this way, this forum has no jurisdiction to try and entertain present complaint.

6. It is clarified that construction of the project is going on and as per declaration given in terms of Section 4(2)(1)(C), it would complete the project by 31.03.2019 and thereafter same will apply for occupation certificate.

7. So far as jurisdiction of this forum to try and entertain present complaint is concerned, Section 31 empowers an aggrieved person to file complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or rules and regulations made thereunder, against any promoter/allottee or real estate

agent as the case may be. Section 18 mandates refund of the amount alongwith interest at such rate as may be prescribed under this Act, if the promoter fails to complete the project or unable to give possession of apartment/unit etc.

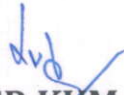
- a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein ; or
- b) due to discontinuance of this business as a developer on account of suspension or revocation of the registration under this Act or for any other reasons;

8. According to section 71, Adjudicating Officer is appointed for the purpose of adjudging compensation under section 12, 14,18 and section 19 of the Act. As complainant/buyer has sought for compensation as well as refund of the amount, this forum is fully competent to try this complaint.

9. It is not denied by respondents that complainants booked unit in their project stated above on 14.05.2011, allotment letter was issued on same day. ABA was executed on 15.10.2011, complainants have paid Rs.62,24,701/- and that same(respondents) were obliged to hand over possession of said unit by 31.08.2014. It is not claim of respondents that said project is complete or unit is ready to be occupied even today. Even if, respondents gave declaration in terms of Section (2)(1)(c) as claimed by it, that same will complete the project by 31.03.2019, this declaration does not deprive the complainants of their right to get refund. The construction of project/unit is highly delayed. No reasonable explanation is given by respondents in this regard. In this way, the complainants are well within their right to claim refund as well as interest and compensation. Complaint in hands is, thus, allowed.

10. Respondents are directed to refund amount received from complaint i.e. Rs. 62,24,701/-alongwith interest @ 9.30% p.a. from the date of each payment within a period of 90 days from the date of this order. The respondents are burdened with cost of Rs.1,00,000/- to be paid to the complainants. Both the respondents will be jointly and severally liable to pay said amounts to complainants.

11. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
28.09.2021

Judgement uploaded on 06.10.2021.