

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

Complaint no. : 2765 of 2020

Date of decision : 21.10.2021

YOGRAJ VERMA
R/O : L-601,
Lagoon Apartment,
NH-8, Ambience
Islands, Gurugram.

Complainant

Versus

RAMPRASTHA SARE REALITY PVT. LTD.
ADDRESS: E-7/12, LGF,
Malviya Nagar, New Delhi

Respondent

APPEARANCE:

For Complainant:

Vikas Khatri- Advocate

For Respondent:

None (ex-parte)

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ORDER

1. This is a complaint filed by Yograj Verma (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainant, on 01.06.2015, he booked a flat in respondent's project **Green ParC-2 (Petioles Towers in Green ParC-2)**, situated at sector-92, Gurugram and made payment of Rs 25,19,649 as booking amount. The respondent vide allotment letter dated 25.07.2015 allotted a flat to complainant, bearing unit No. P030803 admeasuring 2226 sq. ft. for a total consideration of Rs 1,42,11,030 including BSP, PLC, EDC etc. A buyer's agreement was executed on 27.07.2015 in this regard followed by MoU dated 07.08.2015.
3. The booking was made under subvention scheme wherein the all the EMIs were to be paid by respondent till possession. A tripartite agreement dated 27.07.2015 was executed among complainant, respondent and ICICI Bank. After necessary approvals ICICI Bank sanctioned and disbursed a loan of Rs 1,11,13,000 in the account of respondent on 31.07.2015
4. As per Clause 3.3 of buyer's agreement, possession of said premisses was to be delivered within 36 months from the

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date of commencement of construction with grace period of 6 months.. The respondent failed to complete the construction work and consequently to deliver possession of said unit.

5. As per para 3 of MoU dated 07.08.2015, in case allottee is not satisfied with quality of construction or overall progress of infrastructure of entire project then allottee shall have right to terminate the allotment on or after expiry of 15 months from the date of allotment of unit. the respondent agreed to unconditionally refund the booking amount of Rs 25,19,649 without any deduction within 3 months from the date of termination. As per para 6 of MoU, in case allottee exercised the right of termination then respondent was obliged make payment of outstanding amount which was remitted to respondent by Bank as on the date of foreclosure. The respondent also agreed under para 4 of MoU, that till the time booking amount is refunded, respondent shall continue to pay pre- EMIs till the booking amount is refunded.
6. When complainant visted the site, he found that no constrction was being carried out. As complainant was not satisfied with the quality and pace of construction work of project, he exerised his right of termination as per the terms of MoU, vide letter dated 28.03.2018 followed by reminder letter dated 23.08.2018. He (complainant) sought refund of booking amount and foreclsoure of bank loan.

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7. As there was default on the part of respondent towards the payment of EMI, complainant met Vinnet Relia (MD of respondent) who assured that the construction work will be started again and booking amount of complainant will also be refunded soon. It was further assured that EMIs will be paid by respondent. The respondent paid EMIs only till 31.08.2019 and again started defaulting towards the payment of EMIs. As there was default in payment of EMIs, the bank issued the blank cheques of complainant which were handed over to bank at the time of execution of tripartite- agreement. The bank has and initiated proceedings u/s 138 NI Act in Tis Hazari Court, New Delhi.
8. The complainant tried to contact respondent various times but none of his calls was answered and he was not even allowed to enter the office of respondent.
9. In this way, the respondent has committed gross violation of the provisions of section 18(1) of the Act, and hence complainant is forced to file present complaint, seeking refund of booking amount of Rs 25,19,649, return and reimbursement of all dues/penalty towards loan amount of Rs 1,11,13,00 granted by ICICI bank directly into the account of respondent, Rs 10,00,000 towards compensation for mental agony , stress, and Rs 1,00,000 as cost of litigation.

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10.The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	Green ParC-2 (Petioles Towers) Sector 92, Gurugram,
2.	Project area	48.818 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	44 of 2009 dated 14.08.2009 and 68 of 2011 dated 21.07.2011
5.	RERA Registered/ not registered	Registered vide registration No. 270 of 2017
UNIT DETAILS		
1.	Unit no.	P030803
2.	Unit measuring	2226 sq. ft.
3.	Date of Booking	01.06.2015
4.	Date of Allotment	25.07.2015
5.	Date of Buyer's Agreement	27.07.2015
6.	Date of MoU	07.08.2015
7.	Due Date of Delivery of Possession	

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	As per Clause 3.3 of buyer's agreement, possession of said premisses was to be delivered within 36 months from the date of commencement of construction with grace period of 6 months	
8.	Delay in handing over of possession till date	
PAYMENT DETAILS		
9.	Total sale consideration	Rs 1,42,11,030 /-
10.	Amount paid by complainant	Rs 1,36,32,649/- (booking amount + loan amount disbursed by ICIC bank)
11.	Payment Plan	Subvention Payment Plan

11. The notice of complaint was duly served upon respondent. Despite due notice respondent failed to put in appearance or to file written reply. Accordingly, respondent was proceeded ex-parte vide order dated 17.02.2021.
12. In the absence of any written reply on behalf of respondent, contradicting plea taken by the complainant, claim of latter is presumed to have been admitted. As complainant was not satisfied with the progress of construction work at site, he

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exercised his right of termination as per the terms of MoU, vide letter dated 28.03.2018. He (complainant) sought refund of booking amount and foreclosure of bank loan. The photographs annexed with the complaint are evident that the project is not complete. The complainant has exercised its ^{his} right of termination of allotment in terms of MoU dated 07.08.2015, and respondent having executed the MoU is bound by its terms and is obliged to refund the booking amount and foreclose the loan availed under subvention scheme.

13. Complaint in hands is thus, allowed and respondent is directed to refund the amount received from the complainant i.e. Rs 25,19,649 to the latter, within 90 days from today, along with interest @ 9.30% p.a. from the date of termination notice dated 28.03.2018, till its realisation. The respondent is also directed to reimburse the loan amount and foreclose the loan availed under subvention scheme after payment of penalty. The respondent is burdened with cost of litigation Rs 1,00,000 to be paid to the complainant.

File be consigned to the Registry.

21.10.2021


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