



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Friday and 22.10.2021
Complaint No.	CR/3884/2020 Case titled as Tarun Bhargava VS Vatika Limited
Complainant	Tarun Bhargava
Represented through	Shri Gaurav Bhardwaj Advocate
Respondent	Vatika Limited
Respondent Represented through	Shri Venket Rao Advocate
Last date of hearing	09.09.2021
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint has been received on 10.11.2020 and the reply was received on 15.01.2021

Succinct facts of the case are as under:

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon 21 Next
2.	Unit No.	904,9th Floor, Tower A, Super Area-2337.18 sq. ft.
3.	Addendum letter dated 06.04.2011	1102, tower A, Super Area-2408.23 sq. ft
3.	Date of allotment	N/A
4.	Date of builder buyer agreement	11.04.2009

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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Note: Copy of the agreement duly executed by both parties bears stamp date of - 11.04.2009

5. Possession clause

10.1 Schedule for possession of the said apartment

The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building / said apartment within a period of three years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses (11.1),(11.2),(11.3) and clause (39) or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in annexure iii or as per the demands raised by the company from time to time or any failure on the part of the allottee(s) to abide by any of the terms or conditions of this agreement. (emphasis supplied)

7. Due date of possession

11.04.2012

8. Subsequent allottee

22.02.2011

9. Occupation certificate

Not obtained

10. Offer of possession

04.11.2016

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11.	Handing over the possession	21.11.2016
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The complainant has sought following reliefs:

1. Direct the respondent to obtain occupation certificate tower 'A' and issue fresh offer of possession letter to the complainants.

There is nothing on the record to show that the respondent has applied for granting occupation certificate of the particular tower of the project in which the allotted unit of the complainant is situated. So, in such a situation no direction can be given to the respondent to issue fresh offer of possession when the same has already been taken by the complainant admittedly on 21.11.2016. Both the respondent as well as complainant are at fault. The respondent has given the possession of unit without obtaining OC which is compoundable offer. The complainant has taken over possession knowing fully well that OC has not been obtained by the promoter. The complainant is enjoying the possession of the unit. The promoter shall have to certainly obtain the OC from the competent authority. The matter be referred to DTCP for initiating action against the builder for not obtaining OC within the license period and also offering possession without OC.

2. Direct the respondent to register the conveyance deed and transfer title in favour of the complainants upon receipt of occupation certificate, in accordance with section 17 of RERA, 2016.

When the respondent has not obtained occupation certificate of the tower of the allotted unit, then the question of giving a direction to it for execution of conveyance deed does not arise.

3. Direct the respondent to pay interest charges on account of IBMS amount paid by the complainant.

A perusal of the statement of account show that the complainant has already paid a sum of Rs. 1,19,500/- as IBMS with the respondent/builder beside other charges. There is nothing on the record to show that any resident welfare association has been formed. Moreover, in the absence of occupation certificate, the builder cannot validly transfer ownership of common areas to the resident welfare association and the amount collected as IBMS. However, as an when occupation certificate of the tower is received, then within three months



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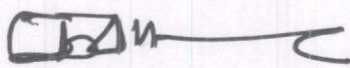
the respondent/builder is obligated to transfer the amount of TBMS collected from the allottees along with interest as per laws.


4. Impose a penalty upon the respondent to the extent of upto 5% of the total cost of the project for violation of section 11(4)(b) of RERA, 2016. The obligation of the builder buyer agreement as has been alleged to have been violated are for a period prior to coming into force of RERA accordingly penal proceeding cannot be initiated. The complainant may file a fresh application for any violation alleged to have been done for the obligations post implementation of RERA.

Order reserved.

Matter to come up on 17.12.2021

Samir Kumar
Member


Dr. KK Khandelwal
Chairman
22.10.2021


Vijay Kumar Goyal
Member