



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. : 241/2021
Date of Decision : 15.09.2021

Ashok Kumar Soni
S/o Late Sh Achint Ram Soni
R/o C-5, Gulmohar Park,
New Delhi

Dr Nishant Soni
S/o Shri Ashok Kumar Soni
R/o C-5, Gulmohar Park,
New Delhi

Nandita Soni Malik
D/o Sh Ashok Kumar Soni
R/o C-5, Gulmohar Park,
New Delhi

Complainants

V/s

M/s Tata Housing Development Co. Ltd
Through its representative
Shri Rajan Kapoor, Asstt Vice-President
Tril Commercial Centre, Intellion Edge
Tower-A, Floor-1, Sector-72
SPR, Gurugram-122101

Respondent

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

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A.D.
15.9.21

Present:

For Complainants:

Mr. Sushil Yadav, Advocate

For Respondent:

Mr Mohd Salim Rakhangi, Advocate

ORDER

This is a complaint filed by three persons jointly named above, (also called as buyers) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief Rules of 2017) against M/s Tata Housing Development Co. Ltd(also referred as developer), seeking directions to the latter to refund a sum of Rs.66,00,000/- alongwith interest @ 18% p.a. from the date of payment till realisation of amount and litigation expenses amounting to Rs.2,00,000/- and further any other relief, as this forum deems fit.

2. According to complainants, vide their application dated 31.10.2012, they applied for allotment of a residential unit in a project of respondent known as TATA Primanti, Sector-72, Gurugram. A Builder Buyer's Agreement (BBA) in respect of unit No.3501,34 floor, Tower-II was executed between them on 16.08.2014. The developer agreed to offer physical possession of said unit by 02.05.2016.

3. After possession was offered on 28.06.2017, they visited the project site, but were surprised to see that facilities had not been provided as promised, at the time of submitting application for allotment on 31.10.2012. The respondent had received huge amount of Rs.2,77,74,702/- from them, whereas same developer (respondent) had sold same size of unit(s) to other allottee like Oriental Bank of Commerce for Rs.2,18,00,000/-. There remained huge difference of Rs.66,00,000/- between the sale price of same size of unit(s) offered/sold to different allottee(s).

4. It is further alleged by the complainants that respondent has violated clause/Article 9.1. to 9.3 of BBA by arbitrarily or intentionally changing site plan. Clause/article 8.14 of BBA clearly provides that no change of whatsoever nature, shall take place against terms and conditions of BBA, unless consent in this regard is obtained in writing. The respondent at its own sweet will and choice, made material changes in the project and its site. All this caused irreparable loss and grave injuries to them.

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

Project related details		
I.	Name of the project	"The Primanti"
	Location of the project	Sector 72, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	3501, 34 th floor
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 2905 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)	30.10.2012
XI	Date of Allotment(original)	30.10.2012
XII	Date of execution of BBA (copy of BBA be enclosed as annexure-B)	16.08.2014

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15/8/21

XIII	Due date of possession as per BBA	July, 2017
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
Payment details		
XVI	Total sale consideration	Rs. 2,77,74,702/-
XVII	Total amount paid by the complainants	Rs. 2,77,74,702/-

6. The respondent filed written reply. It is stated that complainants did not approach this forum with clean hands and suppressed material facts. They (complainants) have made false and vexatious allegations against it and hence not entitled to equitable reliefs, as prayed by them. The complainants on their own sweet will and after going through the application form, booked unit in question, for total sale consideration of Rs.2,84,20,125/- with additional applicable charges and taxes. BBA was executed between the parties, specifying total sale consideration of Rs.2,84,20,125/- with additional charges and taxes. Though it (respondent) had agreed to offer possession on or before 01.11.2015 but subject to force majeure circumstances, as per terms of BBA. Progress in construction work was regularly and frequently communicated to all the buyers including the complainants herein. Through letter dated 18.03.2017, the complainants were intimated about reasons for delay in handing over possession and also that it has applied for occupation certificate on 12.12.2016. On receipt of occupation certificate, offer of possession was made to the complainants on 28.06.2017. The complainants have been asked to pay the balance

amounts after deducting Rs.5,82,434/- towards compensation for delay as per terms of BBA.

7. It (Respondent) made best efforts to complete the project in time but certain factors such as stoppage of work because of ban on use of ground water, redeployment of resources after permission to use treated STP water in construction, shortage of sand due to ban put on mining by the Punjab and Haryana High Court, ban on construction activities in NCR by NGT, heavy rainfall leading to water logging in the area of project site and demonetisation of some currency notes by the Government etc.

8. Learned Authority while disposing of complaint bearing No.1171/2018 vide its order dated 07.02.2019 directed the respondent to pay compensation in the form of prescribed rate of interest and also directed the complainants to take possession. It (respondent) commuted compensation of Rs.9,68,733/- and sent cheque to the complainants but they(complainants) returned the cheque.

9. The complainants instead of taking over possession of their unit filed a belated appeal before the Appellate Tribunal in Nov.2019 challenging the order of Authority and subsequently withdrew that appeal with permissions of Appellate Tribunal. As the complainants have already taken over possession of their unit on 05.03.2021 and compensation is paid to them in accordance with order dated 07.02.2019 of Authority passed in Complaint No.1171/2018. The order dated 07.02.2019 passed by the Authority has attained finality, the complainants are not entitled to any further relief of compensation. Further allegations of complainants with regard to selling units to Oriental Bank of Commerce at lesser price and to seek refund of Rs.66,00,000/- being extra amounts is not maintainable.

10. On reasons noted above, respondent requested for dismissal of complaint.

11. I have heard learned counsels for parties and perused the documents brought on record.

12. It is not disputed by respondent that there occurred delay of more than one year in handing over possession of unit in question. BBA in this matter is stated to have been executed between the parties on 16.08.2014. The developer had agreed to offer physical possession of allotted unit by 02.05.2016. But possession was offered to them on 28.06.2017. Complying with order dated 07.02.2019 passed by HARERA, Gurugram on a complaint filed by present complainant, respondent sent a cheque for sum of Rs.9,68,733/- dated 03.05.2019 to the complainants, after calculating compensation interest @ 10.75%p.a. from 02.05.2016 to 28.06.2017 and deducting remaining due against the complainants amounting to Rs.17,98,764/-. Said cheque was not accepted by the complainants and was returned to respondent. Through a fresh letter of possession dated 05.03.2021, possession of unit in question has been handed over to the complainants alongwith amount of compensation of Rs.10,70,855/- which is credited in the account of complainants through RTGS on 20.03.2021. This fact is not denied on behalf of complainants.

13. Respondent has already enumerated the force majeure circumstances due to which completion of project was delayed. Considering the same and also the fact that complainants have already accepted the amount of compensation, in view of order passed by the Authority, possession of unit in question has also been accepted by the complainants, I find no reason for directions to the respondent to refund the amount received from the complainants, as prayed for.

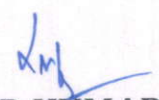
14. As stated earlier, apart from delay in handing over possession of unit in question, the complainants have alleged that there was change in site plan of the project. It is contended that the respondent very cleverly managed to provide main entrance from different point through which the complainants had to pass on revenue road which is always overcrowded with heavy vehicles and again that respondent sold some flats to different buyers for example in favour of Oriental Bank of Commerce on lesser rates.

15. These allegations are refuted by the respondent. Although, complainants have put on file, a copy of site plan (Annexure C-4), but it is not clear as how building plans were changed by the respondent, after the agreement with complainants. Similarly, there is nothing on record to verify that respondent sold similar unit to Oriental Bank of Commerce on lesser rates as alleged. Even otherwise, it is not the plea of complainants even that any maximum sale price of units was fixed by the Government or any other Authority. It was sweet will of the parties to agree on sale price. It is not denied by the complainants that they had signed BBA voluntarily where sale consideration was fixed.

16. On the basis of above discussion, I do not find any reason for direction to respondent to refund the amount received from the complainants. Complaint, in hands is thus dismissed. Parties to bear their own costs of litigation.

17. File be consigned to the Registry.

15.09.2021


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

Judgement uploaded on 25.10.2021.