

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

Complaint no. : 1051 of 2020

Date of decision : 29.10.2021

BIJOYA MOHANTY
R/O : B-801, Spring
Valley, Plot-3 C,
Sector-11, Dwarka,
New Delhi

Complainant

Versus

M/s SILVERGLADES INFRASTRUCTURE
PVT. LTD.
ADDRESS : C-8/1 A, Vasant Vihar,
New Delhi

Respondent

APPEARANCE:

For Complainant:
For Respondent:

Priyanka Agarwal Advocate
Suresh Rohilla Advocate

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ORDER

1. This is a complaint filed by Bijoya Mohanty (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 03.06.2013, she booked a service apartment in respondent's project **Merchant Plaza** situated at sector-88 Gurugram and paid Rs 4,00,000 as booking amount. The respondent issued an allotment letter dated 09.06.2014 and allotted a unit No. SA-513, admeasuring 704 sq. ft. for a total consideration of Rs 47,83,931 including BSP, PLC and EDC, etc..
3. The respondent had sent buyer's agreement vide letter dated 17.04.2015 for execution of the same. There were no details regarding fitting and fixtures . Complainant vide her email dated 20.04.2015 approached respondent and sought details of fittings and fixtures and other expenses etc. She (complainant) sent various reminders through emails dated 30.04.2015 and 15.06.2015. The respondent vide reply dated 06.07.2015 gave superficial details of fittings and fixtures. The

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complainant through email dated 07.07.2015 requested respondent to re-send buyer's agreement after incorporating details of fittings and fixtures.

4. As per demands raised by respondent, she (complainant) made timely payment of Rs 16,42,735/- Despite sending an amended agreement, respondent again raised demand of payment of instalment on 23.07.2015. Respondent sent draft of buyer's agreement on 16.08.2015 but without incorporating changes suggested by her.
5. The respondent incorporated two unilateral clauses 1 and 4.16 and compelled her to sign the agreement. She (complainant) objected to this unfair conduct of respondent through her emails dated 1.08.2015, 21.08.2015, 16.09.2015 and requested for incorporation of details about fixtures and fittings or to cancel her booking. The respondent failed to reply any of the emails of complainant. The complainant sent reminders dated 30.09.2015, 20.11.2015, 30.11.2015, 24.12.2015 and 26.01.2016.
6. As there was no response from the side of respondent, she (complainant) visited former's office where she was promised that all the details will be incorporated in the agreement and clarity will be given on rental aspect. The respondent did not take any action despite many requests and accordingly, she

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(complainant) vide email dated 13.04.2016 sought cancellation of booking and refund of her money.

7. The respondent asked her (complainant) to shift rental unit into non-rental unit through email dated 14.07.2016. The respondent even sent demand letter dated 10.02.2017. The complainant again vide emails dated 06.06.2017, 08.09.2017 and 12.02.2017 requested for execution of agreement.
8. The complainant vide letter dated 10.07.2018 sent through speed post requested for cancellation of unit, as when she visited the site of project in June 2018, it was in redundant condition. The respondent has received 50 % of total sale consideration, without execution of buyer's agreement and again it raised demand of another instalment i.e. 40 % of cost of unit by adding interest of Rs 8 lacs.
9. The respondent vide email dated 11.09.2018 informed her (complainant) that project is ready but when she visited the site on 12.09.2018 only super structure was found ready. She (complainant) again requested for refund of her money vide emails dated 25.08.2018, 06.09.2018, 03.10.2018, 03.12.2018, 07.03.2019 and 22.04.2019 but respondent failed to reply the same. Despite refunding complainant's money, respondent sent a possession letter dated 17.02.2020 after 7 years of booking.

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10. Contending that the respondent has committed gross violation of provisions of Act of 2016 by inordinately delaying the possession of unit and execution of buyer's agreement, the complainant has sought refund of entire amount of Rs 16,42,735, along with interest and Rs 5,00,000 towards compensation for mental harassment and agony and Rs 60000 as compensation for litigation charges.

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

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name	Merchant Plaza
2.	Project Location	Sector 88, Gurugram
3.	Nature of Project	Commercial Complex
4.	DTCP License No.	01 of 2013 dated 07.01.2013
5.	Area of Project	2.75625 acres
6.	Name of License holder	Magnitude Pvt. Ltd.
7.	HRERA Registration	Registered vide registration no. 340 of 2017
8.	Building Plans	30.05.2013
9.	Date of Occupation Certificate	11.02.2020
UNIT DETAILS		

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1.	Unit no.	SA-513
2.	Unit measuring	704 sq. ft.
3.	Date of Booking	03.06.2013
4.	Date of Allotment letter	09.06.2014
5.	Date of Buyer's agreement	Not executed
6.	Clause 11.1 of buyer's agreement, possession of unit was proposed to be delivered within 4 years from the date of approval of building plan or such other approval, whichever is later, with further grace period of 180 days .	16.06.2018 (consent to establish was received on 16.06.2014)
7.	Delay in handing over possession till date of offer of possession	1 year 8 months
8.	Offer of Possession	17.02.2020
PAYMENT DETAILS		
9.	Total sale consideration	Rs 47,83,931
10.	Amount paid by the complainants	Rs 16,42,735

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12. Respondent contested the claim by filing written reply dated 08.06.2021. It is averred that complainant has no locus standi to file present complaint. It (respondent) has not violated any of the provisions of Act of 2016. This complaint has been filed on 25.02.2020, only after receipt of possession letter dated 17.02.2020. Refund cannot be granted in view of law settled by Hon'ble Appellate Tribunal in case : **Sameer Mahawar v MG Housing Pvt.. Ltd. Appeal No. 06/2018** decided on 02.05.2019. There is no allegation that project has not been developed and completed by respondent in accordance with sanctioned plans, layout plans and specifications. The respondent has not violated any provisions of Act of 2016, which is evident by the fact that competent authority has issued an Occupancy Certificate, for this project on 11.02.2020.

13. Further, there is no inordinate delay in handing over of possession. However some delay occurred due to many factors including but not limited to shortage of materials, labour, lockdown, force majeure etc. It (respondent) received last approval to commence the construction i.e. 'Consent to establish' on 16.06.2014. Moreover, the project was registered under Act of 2016 vide registration certificate dated 10.10.2017. Further period of 6 months was granted by HARERA vide order dated 26.05.2020. The complainant had

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booked a retail shop and a unit was allotted to her vide allotment letter dated 09.06.2014. Buyer's agreement was sent to her on 17.04.2015 and again on 04.05.2017 but complainant failed to sign it. The development work of the project was completed in September 2019. The unit was furnished and completed in all respects. The complainant had requested for change of rental to non-rental pool and same was confirmed and accepted by the complainant vide letter dated 14.07.2016.

14. Respondent stated further that complainant failed to make payment of installments as demanded by respondent from time to time. Payments are delayed by 7 years as last payment was made on 19.04.2014. As per terms of agreement and payment plan, any delay in making payment was to be chargeable with 15 % simple interest .
15. Stating all this, respondent prayed for dismissal of complaint with a direction to complainant to clear outstanding dues.
16. It is an admitted fact that no buyer's agreement has been executed between the parties. The complainant sought changes and clarification about fixtures and fittings etc in the buyer's agreement. No such changes were incorporated by respondent in buyer's agreement. Receipt of letters/requests through emails as claimed by complainant is not denied during arguments.

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17. The contention of respondent that complainant had requested for change of rental to non-rental pool and same was confirmed and accepted by the complainant vide letter dated 14.07.2016 is not tenable as the said letter was of respondent and not of complainant. The respondent has not placed on record any letter/request of complainant where she had sought change of rental to non-rental pool. Counsel for complainant denied his client having made any such request.
18. It is not denied that respondent has received 40 % of sale consideration of unit. If parties had failed to agree on terms and conditions of sale, the respondent should have refunded the amount received from complainant. As per complainant when despite writing several letters, asking to execute buyer's agreement, respondent failed to execute it, she (complainant) on 11.07.2018. sent a letter seeking cancellation of unit. it is not contention of anyone that it was oral contract between them.
19. I find weight in the contention of complainant alleging that respondent without any reason enjoyed the amount i.e. equal to almost 40 % of total sale consideration for a long time. On the basis of facts discussed above, in my opinion, the, complainant is well within her right to claim refund of amount paid by her to the respondent. Complaint in hands is thus, allowed and respondent is directed to refund the amount

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received from the complainant i.e. Rs 16,42,735/- to the latter, within 90 days from today, along with interest @ 9.30% p.a. from the date of each payment till its realisation. A cost of litigation etc, Rs 1,00,000 is imposed upon respondent to be paid to complainant.

File be consigned to the Registry.

29.10.2021

(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 22.11.2021.

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