



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. : 220/2019
Date of Decision : 03.09.2021

Shri Vinay Gupta
R/o Shepherd Law Associates
314, US Complex, Mathura Road,
New Delhi-110070

Complainant

V/s

M/s KNS Infracon Pvt Ltd.
517A, Narain Manzil,
23, Barakhamba Road,
New Delhi-110001

M/s Tash ee Land Developers Pvt Ltd.
517A, Narain Manzil,
23, Barakhamba Road,
New Delhi-110001

Respondents

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

Present:

For Complainant:
For Respondents:

Mr. Gaurav Srivastava, Advocate
None

ORDER

This is a complaint filed by Shri Vinay Gupta (also referred as buyer) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief Act

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of 2016) read with Rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief 'Rules') against respondents M/s KNS Infracon Pvt Ltd. & M/s Tashee Land Developers Pvt Ltd.(also called as promoters) seeking directions to the respondents/promoters to refund a sum of Rs.30,23,778/- alongwith interest and compensation of Rs.48,15,229.57p. and also to recommend criminal action.

2. According to complainant/buyer, his predecessor-in-interest vide application dated 20.12.2010 booked a housing unit measuring 1695 sq ft i.e. flat No.1007 on 10th floor, Tower-D in multi-storey group housing colony known as CAPITAL GATEWAY in Sector -111, Gurugram. He bought the said unit from his predecessor on 13.02.2012. Vide letter dated 15.02.2012, respondent No.1 transferred unit in question in favour of him(complainant) and an amount of Rs.13,25,718/- paid by predecessor-in-interest of the complainant was considered to be paid him(complainant). On 02.02.2013 he also entered into a contract with respondents. He (complainant) has paid an amount of Rs.30,23,778/-. Despite making regular payments, the respondents issued cancellation letter dated 22.12.2014 stating therein that after deducting 15% of earnest money, they(respondents)s shall refund the balance amount to the complainant. On receipt of cancellation letter, he contacted the officials of respondents to get the confirmation but all in vain. He wrote emails to respondents dt.26.04.2017, 29.04.2017, 03.05.2017, 20.08.2018 but could not get any reply or refund. Compelled in this way, he sent a legal notice dated 16.11.2018 and then filed present complaint.

3. Brief facts in tabular form are reproduced as under:

Project related details		
I.	Name of the project	"CAPITAL GATEWAY"
II.	Location of the project	Sector 111, Gurugram

III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	Flat No.1002, 10 th floor
V.	Tower No. / Block No.	D
VI	Size of the unit (super area)	Measuring 1695 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)	20.12.2010
XI	Date of Allotment(original)	
XII	Date of execution of BBA/SBA (copy of BBA/SBA enclosed)	13.02.2013
XIII	Due date of possession as per BBA/SBA	07.06.2015/06.12.2015(with grace period)
XIV	Delay in handing over possession till date	More than 5 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. 51,69,750/-
XVII	Total amount paid by the complainants	Rs.30,23,778/-

4. Respondents contested the claim of the complainant/buyer by filing written reply. It is averred by respondents that due to various factors, They(respondents) were constrained to stop work. Firstly, in the year 2016 when the construction was put on hold under the directions of Delhi Govt and its neighbouring states, owing to alarming and unprecedented rise in the level of air pollution. This demobilising and remobilising activities led to delay in construction. In addition to

this, Govt of India announced demonetisation, which affected the liquidity and adversely hit the productivity and brought the construction work to a halt. Moreover, as per clause 4.9 of BBA, respondents undertook to pay a sum of Rs.5/- per sq ft of the super area per month, for the period of delay. Complainant is entitled to claim only that much compensation, even if any delay.

5. It is further stated that work at project site is going on and all endeavours are being made, to complete the project and to hand over possession of allotted unit, to the buyers.

6. There is a document on record called Flat Buyers Agreement(FBA) stated to have been entered between the parties on 01.08.2012. According to clause 2.1 of the FBA, the respondent was obliged to offer possession within a period of 36 months, from the date of sanction of building plan of said project. The purchaser had agreed for grace period of 180 days, for applying occupation certificate. There is no evidence on record as when building plans of project of the respondent were sanctioned. Taking the date of FBA as date of counting, due date for possession comes to 01.08.2015. The project is nowhere near completion. The respondent were entitled to grace period only when same is able to establish that construction could not be completed due to reasons beyond its control. No such circumstances are shown. It is vaguely stated by respondents that they are making every effort to complete it and to hand over possession to buyer.

7. It is well settled by plethora of authorities that a buyer cannot be made to wait for possession of his/her dream home, indefinitely or for such a long period like case in hands.

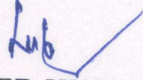
8. So far as plea of the respondents that construction was delayed due to force majeure conditions. Although respondent referred orders passed Delhi Govt stopping construction work in NCR, no copy of any order or even detail of same is given. No specific dates are mentioned by the respondent, when construction work remained stayed due to orders passed in this regard. It is absurd to take shelter in

order of Government regarding demonetisation of some currency notes. Same were remotely related to the construction activities.

9. Respondents failed to explain delay in construction of project/unit. In this way, the complainant is well within his right to claim refund as well as compensation. Plea of compensation @ Rs.5/- per sq ft is unreasonable and is contrary to object of the Act, 2016 and hence not binding upon the buyer.

10. Complaint in hands is, thus, allowed. Respondent is directed to refund amount received from complainant i.e. Rs.30,23,778/- alongwith interest @ 9.30% p.a. within a period of 90 days from the date of this order. The same is also burdened with cost of Rs.1,00,000/- to be paid to the complainant. Claim for compensation of Rs.48,15,229.57 as calculated by complainant, appears to be unreasonable. Same is thus declined.

11. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
03.09.2021

Judgement uploaded on 17.09.2021.