

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

Complaint no. : 1589 of 2019

Date of decision : 15.09.2021

NEIL ACHARYA AND NANDINI ACHARYA
R/O : Flat No. E 113, Jalvayu Tower
Sector-56, Gurugram

Complainants

Versus

PRERNA INFRASTRUCTURE PVT. LTD.
C7A, 2nd Floor, Omaxe City Mall,
Sohna Road, Gurugram

Respondent

APPEARANCE:

For Complainants:

For Respondent:

Gaurav Madan (Adv)

Prashant Sheoran (Adv)

ORDER

1. This is a complaint filed by Neil Acharya and Nandini Acharya (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read



with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/promoter.

2. As per complainants, on 28.02.2014, they jointly booked a flat in respondent's upcoming project situated at sector-68 Gurugram. They (complainants) made payment of Rs 1,00,000 as booking amount for a unit admeasuring 1000 sq. ft. againts sale consideration of Rs 56,35,000.
3. As respondent did not give any information regarding commencement and completion of construction of project, the complainants visited the office of respondent to see the title deed of the land on which the said project is to be constructed and sanction plan of the project. The respondent failed to give any information with respect to the said project and threatened complainants with dire consequences. The respondent does not have license and sanctioned plan for said project.
4. They (complainants) have paid Rs 12,19,925 i.e 22 % of the total consideration but respondent failed to execute any buyer's agreement and failed to give any information about the commencement and progress of construction work of the project. In such circumstances, they (complainants) had no other option, except to cancel the booking and they approached broker of respondent and cancelled the booking

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of unit through the broker vide NOC dated 23.12.2014 and sought refund of amount paid by them alongwith interest at prescribed rate and Rs.1,00,000/- as costs of litigation.

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

S.No	Heads	Information
PROJECT DETAILS		
1.	Project name	Micasa
2.	Project Location	Sector 68, Gurugram
UNIT DETAILS		
1.	Unit no.	No allotment
2.	Unit measuring	1000 sq. ft.
3.	Date of Booking	28.02.2014
4.	Date of Allotment Letter	No Allotment
5.	Date of Buyer's Agreement	Not Executed
PAYMENT DETAILS		
6.	Basic sale consideration	Rs 56,35,000
7.	Amount paid by the complainants	Rs 12,19,925
8.	Payment Plan	Construction Linked

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6. The respondent contested the complaint by filing a reply dated 20.05.2019. It is averred that two projects were being developed by it (respondent) i.e. Coban Residences in sector - 99 A , Gurugram and Micasa in sector- 68 Gurugram. The complainants had initially booked a flat in project Coban Residences. Licenses from DTCP for the said project was received on 12.03.2013 and even building plans were approved on 25.07.2013. The complainants later transferred said booking to another project i.e. Micasa described above on 08.08.2015 (Annexure R 4). At the time of accepting the transfer request of complainants, the license and building plans for said project i.e. Micasa had already been obtained by it (respondent). No new booking amount was charged from the complainants, for the said change of their booking from Coban Residences to Micasa. The allotment of any specific unit in the project is still awaited and the same was to be allotted through formal allotment letter. It (respondent) is ready to give the possession of the unit, subject to payment of due installments and charges by the complainants.
7. In the year 2016, complainants had approached District consumer forum and the said complaint was withdrawn by them. The complainants have concealed this fact from this forum.

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8. The money which has been paid by the complainants was towards the booking in project at sector 99 A and no money has been paid after transfer of booking i.e towards the booking in project Micassa in sector 68. The complainants never visited the office of respondent to know about the progress of project at sector-68.
9. Contending all this respondent prayed for dismissal of complaint.
10. As described above, according to respondent, complainants applied for change of their unit from Coban Residencies Sector 99-A to other project ^{that} this is Micasa in Sector 68, Gurugram. A document (R-4) has been put on file. If the same is taken as true, complainants applied for substitution of allotment of flat. There is correction in the date on said application. Same is either 08.08.2014 or 08.08.2015. According to respondent, said application was allowed and the amount already paid by the complainants for earlier unit in Sector 99-A was adjusted in another project situated in Sector 68. The complainants have also filed copies of some documents including their application seeking substitution of allotment of flat. But this application appears to be different from application (R-4) as same mentions unit in sector 68 having already been allotted to complainants. Column of date is totally blank. The respondent in its reply has asserted that

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document as R-4 is true copy of that application and not, which is filed by the complainants. Even if respondent is true in its plea, a copy of application for registration of allotment of the flat has also been put on file. Several columns including name of project are blank. Respondent did not dispute genuineness of this document. It appears that respondent procured these documents from complainants having blank columns, apparently to be filled later on.

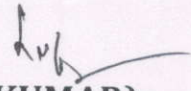
11. Whatsoever it may be, even according to respondent and as described above, application of complainants for substitution of allotment of flat dated 08.08.2014 or 08.08.2015 was allowed and amount paid by the complainants for earlier unit was adjusted in later project i.e. situated in Sector 68. Even as per respondent, building plans for the project in Sector 68 were sanctioned on 28.04.2015, vide memo No. 6699. Copy of which is annexure R-8. The complainants claim to have sought cancellation of their unit in project located in Sector 68 by letter dated 23.12.2014 sent in this regard by them[^] (complainants)[^] through M/s Investors Clinic Infratech Pvt. Ltd. Copy of same is on the record as Annexure III. Receipt of which is not denied by the respondent. It can be presumed that said letter was received by the respondent on any day in December 2014. Even building plans of project in Sector 68 had not been sanctioned till that date. The complainants have thus



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~~thus~~ requested for cancellation of their unit and refund of the amount, before building plans were sanctioned, meaning thereby that project had not started even. In that event, it was not proper for respondent to deny cancellation or even to deduct any amount as penalty. Admittedly, No BBA has been executed between the parties.

12. In these circumstances, the respondent had no right to retain the amount received from the complainants. The latter are well within their right to demand for refund. Complaint, in hands, is thus allowed. Respondent is directed to refund the amount of Rs 12,19,925/- to the complainants as received from them till date, within 90 days from today alongwith interest @ 9.3% from the date of receipt of each payment till realization. Respondent to pay cost of litigation Rs.50,000/- to complainants.

13. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
15.09.2021