



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		26
Day and Date	Thursday and 23.02.2023	
Complaint No.	CR/274/2020 Case titled as ALOK SHRIVASTAVA AND EKTA SINHA Vs LOTUS GREENS DEVELOPERS PVT LTD	
Complainant	ALOK SHRIVASTAVA AND EKTA SINHA	
Represented through	Shri Manan Gautam proxy counsel	
Respondent	1. M/s Lotus Greens Developers Private Limited 2. Bright Buildtech Private Limited	
Respondent Represented	Shri Deeptanshu Jain Advocate	
Last date of hearing	22.12.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The present complaint has been received on 29.01.2020 in the authority and the reply has been filed on 10.08.2021.

Succinct facts of the case as per complaint and annexures are as under:

S. No.	Heads	Information
1.	Name and location of the project	"Woodview Residences", Sector 89-90 Gurugram, Haryana
2.	Nature of the project	Plotted Colony
3.	Area of the project	101.081 acres
4.	DTCP License	59 of 2013 dated 16.06.2013
	valid up to	15.07.2021
	Licensee name	Orris Land & Housing Pvt. Ltd. and 42 others
5.	RERA registered/ not registered	Registered vide no. 34 of 2020 dated 16.10.2020

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्हत गठित प्राधिकरण

	Valid up to	15.07.2023
6.	Unit no.	D-1, Under ground floor, pocket-2, (Page no. 65 of the complaint)
7.	Total area admeasuring	2998 sq. ft. (Page no. 65 of the complaint)
8.	Allotment Letter	27.10.2016 (Page no. 60 of the complaint)
9.	Date of execution of buyer's agreement	08.11.2016 (Page no. 62 of the complaint)
10.	Possession clause	Clause 5(I) The company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within 36 months, with a grace period of 6 months from the date of issuance of allotment letter provided that all amounts due and payable by the buyer has been paid to the company in timely manner.
11.	Due date of delivery of possession	27.04.2020 (Calculated from date of allotment letter dated 27.10.2016 + 6 months) (Grace-period allowed)
12.	Total consideration	Rs.1,72,30,897/- (Page no. 66 of the complaint)
13.	Total amount paid by the complainant	Rs.52,68,687/ (As per averment of complainant at page no. 17 of the complaint)
14.	Date of offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	Legal notice send by the allottee	27.07.2019 (Page no. 98 of the complaint)

The complainant has sought following relief:

1. Direct the respondent to refund Rs.52,68,687/ paid by the complaint along with interest.

In the instant matter the due date of handing over of possession comes out to be



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23/2/2023

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

27.04.2020 as specified above in the table. However, the complainant has approached the Authority on 29.01.2020 i.e., before due date of handing over of possession. However, they also made request to the respondent-builder through legal notice dated 27.07.2019 i.e., before due date of handing over of possession seeking refund against the allotted unit.

Hence, the matter is not covered under section 18(1) of Act. However, the respondent should have refunded the amount of the complainant after due deductions. The same has not been done.

As per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

The respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10.70 % p.a. on the refundable amount, from the date of this surrender i.e., 27.07.2019 till the date of realization of payment.

Any amount paid towards subvention scheme may be adjusted in the refundable amount.

Complaint stands disposed off. Detailed order will follow. File consigned to the registry.


Vijay Kumar Goyal
Member

23.02.2023