

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 13.10.2020
Complaint No.	CR/412/2020 Case titled as Nalini Subir V/S Sana Realtors Private Limited
Complainant	Nalini Subir
Represented through	Ms. Priyanka Agarwal Advocate
Respondent	Sana Realtors Private Limited
Respondent Represented	None
Last date of hearing	26.08.2020
Proceeding Recorded by	Naresh Kumari

**Proceedings**

Case has been called out several times but no one has appeared on behalf of the respondent. It appears that he is not interested in pursuing the complaint. It is already 12.30 PM. Waited sufficiently. Respondent is proceeded against ex-parte.

Complaint No.3915/2019 is disallowed for want of necessary documents and details to proceed in the matter. Accordingly, the complaint is dismissed.

In complaint No.6640/2019, an application dated 31.01.2020 for withdrawal of the complaint has already been moved by the complainant. The said application is allowed and the complaint stands dismissed as withdrawn.

The complaints in CR/2763/2019, CR 1474/2019, CR 1983/2019, CR 2383/2018, Cr 2812/2019, CR 3281/2019, CR /371/2019, CR 384/2019,



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह सिविल लाईंस गुरुग्राम हरियाणा

CR 1147/2019, CR 1277/2019, CR 828/2019, CR 5776/2019, CR 6093/2019, CR 6095/2019, CR 5995/2019, CR 5698/2019, CR 5693/2019, CR 6175/2019, CR 5984/2019, CR 5664/2019, CR 5699/2019, CR 6222/2019, CR 6218/2019, CR 6529/2019, CR 6777/2019, CR 187/2020, CR 188/2020, CR 249/2020, CR 341/2020, CR 412/2020, CR 853/2020, CR 879/2020, CR 892/2020, CR 876/2020, CR 878/2020, CR 854/2020, CR 855/2020, pertains to project "Precision Soho Towers", Sector-67, Gurugram. The commercial project has been developed on an area of 2.456 acres. The project is not registered with the authority. There are two occupation certificates granted for this project: one for Tower-A and Tower-C, occupation certificate dated 18.07.2017; other for Tower-B occupation certificate dated 10.10.2019. Although both these OCs have been received after coming into force of this Act but keeping in view that the fire NOC in first occupation certificate was granted on 03.03.2017, accordingly this may be prima facie exempted from the registration requirement as per Haryana Real Estate (Regulation and Development) Rules, 2017. The other occupation certificate for Tower-B was granted on 10.10.2019 that is much beyond the date of publication of the Rules ibid. Even the fire NOC was obtained on 5.4.2019 which is pre-requisite for making an application for occupation certificate. The application can be said to be completed only on 5.4.2019 and this is covered in the definition of on-going project, accordingly needs to be registered. Copy of this observation be sent to Planning branch for examining the matter and for issuance of show cause notice to the promoter for not getting the project registered as per the provisions of the Real Estate (Regulation and Development) Act 2016 and the rules made thereunder.

The licence for the project was issued vide No.72 of 2009 dated 26.11.2009 renewed upto 25.11.2019. The completion certificate for the project has not been issued.



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In CR 2763/2019, CR 371/2019, CR 384/2019, CR 1147/2019, CR 1277/2019 and CR 828/2019 reply has been filed and in rest of the matters, no reply has been filed by the respondent even after service being complete.

As occupation certificate has been obtained in respect of units mentioned in the complaints as detailed above, the promoter is duty bound to give possession within a period of three months to the allottees from the date of obtaining occupation certificate. This is a major failure of the promoter and violation of provisions of section 17 (1) of the Act *ibid*. Show cause notice be issued to the promoter as to why penal proceedings for violation of section 17 (1) which is punishable under section 61 of the Act *ibid* be not initiated.

In some of the cases, the promoter has demanded payment under the payment demand notice at the time of possession vide letter dated 1.8.2015. This letter is totally illegal as by that time the promoter has not received any occupation certificate then how he is entitled to demand such payment. This shows grave mischief on the part of the promoter. Again the promoter has offered possession on 24.7.2017 without intimating the details of occupation certificate obtained by him. Although occupation certificate was received in respect of Tower-A and C by them but not in respect of Tower-B. Without mentioning the details of the occupation certificate and offering possession smack irregularities by the promoter. It is surprising that the unit numbers were unilaterally changed.

The promoter has asked for payment in respect of increase in super area for which no details have been provided. When there is no revision of the building plans then how the area of unit is changed.

In all these cases, delayed possession charges have been prayed for by the complainants. The authority after considering facts and circumstances in each of the above complaints as referred above decides as under:-



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- i) The complainants are entitled for delayed possession charges which shall be paid by the promoter as interest for every month of delay at the prescribed rate i.e. 9.30% per annum till the handing over of possession.
- ii) Wherever possession has not been offered, the same be done within 15 days.
- iii) Wherever super area has been increased without any justification and demand for increase of super area has been raised, the same is dis-allowed and wherever it has been paid by the complainant, the promoter is directed that the same be returned/adjusted by the promoter.
- iv) Even the allotted super area has been challenged in some of the complaints, this issue will be referred to the forensic auditor and will be taken up in suo motu proceedings. In suo motu proceedings any of the complainant may become a party, if desired. Notice of intimation regarding suo motu proceedings be sent to concerned complainant.
- v) It has also been alleged that the promoter has not offered the legal possession in most of the cases and demanding maintenance charges from the allottees. Without giving actual physical possession of the unit, the demand for maintenance charges/holding charges is illegal, accordingly disallowed.
- vi) If there is any demand which is beyond the scope of BBA, the same is also dis-allowed.
- vii) In some of the cases, the units were sold on assured return basis, the legality of the same shall be taken up after the forensic audit report which is being ordered by taking up suo motu proceedings by the authority.
- viii) The occupation certificates have been obtained in respect of Tower-A, B and C whereas in the allotment letters no mention has been made about the tower of particular unit.

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

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

भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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- ix) The authority considers it expedient to do so on the basis of information gathered from large number of complaints about the project initiates suo motu proceedings and call upon the promoter to furnish in writing the following documents on 28.10.2020. The promoter has failed to represent before the authority in these complaints except reply in few complaints. The bailable warrants be issued to the promoter to appear before the authority on 28.10.2020 alongwith the documents filed at the time of obtaining occupation certificates and also deed of declaration filed in the office of DTCP Haryana in pursuance of compliance of occupation certificates.

Based on above, details orders in all cases will follow. The complaints stand disposed of. File be consigned to the registry.

  
Samir Kumar  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
13.10.2020

  
Subhash Chander Kush  
(Member)