



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 S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY**

Complaint No.6772/2019
Date of Decision: 07.04.2021

Ankur Maheshwari & Renu Maheshwari
R/o 1132, Tower No. 9A, GH-I, Crossing
Republic, Ghaziabad, -201016
Gurugram

Complainants

Vs

M/s Revital Reality Pvt Ltd
1114, 11th Floor, Hemkunt Chambers
89, Nehru Place, New Delhi

Respondent

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

Argued by:

For Complainants:
For Respondent:

Sh S.K. Maheshwari, AR
Sh. Bhriugu Dhami, Advocate

ORDER

This complaint has been preferred by complainants named above

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

Sh. S.K. Maheshwari
7/4/2021

(hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) seeking refund of Rs. 7,48,799/-deposited against total sale consideration of Rs. 19,28,500/- for booking of residential unit under the Affordable Housing Policy-2013 floated by the State of Haryana in the project known as "SUPERTECH BASERA" situated in Sector 79 & 79B, Gurugram besides taxes etc on account of violation of obligations on the part of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Project related details Complaint No.6772 of 2020		
I.	Name of the project	SUPERTECH BASERA" situated in Sectors 79 & 79B, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	1103
V.	Tower No. / Block No.	Tower 15, 11 th Floor
VI	Size of the unit (super area)	Measuring 473 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)	20.02.2014

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XI	Date of provisional allotment(original)	19.09.2015
XII	Date of Execution of FBA	23.12.2015
XIII	Due date of possession as per FBA	Within four years from the date of getting EC
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 3.1, Rs.5/- per sq ft per month for the period of delay

Payment details

XVI	Total sale consideration	Rs. 19,28,500/-
XVII	Total amount paid by the complainants	Rs.7,48,799/-

2. A project known by the name of "Supertech Basera" situated in Sectors 78 and 79-B, Gurugram was being developed by the respondent. The complainants coming to know about the said project applied for allotment of a unit under the Affordable Housing Policy-2013 of the State of Haryana and on being found successful in the draw of lots were allotted a unit detailed above on 20.12.2014. In pursuant to allotment of the unit in their favour, it led to execution of Flat Buyer Agreements dated 23.12.2015. It is the case of the complainants that in pursuant to allotment and execution of FBA, they started depositing various amounts and paid a sum of Rs. 7,48,799/- upto March 2019 against the total sale consideration of Rs. 19,28,500/-. However, the construction of the project was not going on at a proper and scheduled pace despite paying substantial amount, so they were forced to withdraw from the project on 26.03.2019 and sought refund of the amount deposited

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with the respondent. A number of reminders were also issued pointing out the slow pace of construction and the project not coming up to date. But despite that the respondent failed to refund the amount deposited with it. So, on these broad averments, they filed a complaint seeking refund of the amount detailed above besides interest and compensation.

3. But the case of the respondent as set up in the written reply is otherwise and who took a plea that though the complainants were allotted a residential unit detailed above but they committed default in making regular payments of the amount due and which led to slow pace of construction. However, it was pleaded that every effort is being made to complete the construction of the project and offer of possession of the allotted unit to the complainants. It was denied that the complainants are entitled to withdraw from the project. Moreover, if their plea in this regard is allowed, then it may hamper the progress of the project and which would be detrimental to the interest of other allottees. Lastly, it was pleaded that due to some unavoidable circumstances, the construction of the project could not pick up. The Central Government has also decided to help the bonafide builders to complete the stalled projects held up due to scarcity of funds. It was also pleaded that the complaint filed by the complainants is pre-mature and the same is not maintainable.

4. All other averments made in the complaints were denied in toto.

5. I have heard the learned counsel for both the parties and have also perused the case files.

6. It is not disputed that under the Affordable Housing Policy-2013 floated by the State of Haryana, the respondent launched the project by the name of "Supertech Basera" in Sectors 78 and 79-B. The applications for allotment of residential units under that Policy were invited and the

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complainants being found successful in the draw of lots were allotted a unit detailed above for a total sale consideration of Rs. 19,28,500/-. It is a fact that after allotment of the unit, the allottees entered into FBA detailed above with the respondent and started depositing various amounts. It is the case of the complainants that construction of the project was not going on at a proper speed and due to some other reasons, they could not continue with the project and decided to withdraw from the same. It is also a fact that when the complainants moved for cancellation of the allotted unit, the due date for completion of the project has not yet expired. So, in such a situation whether the plea of the respondent that complainants should not be allowed to withdraw from the project is untenable or not.

7. A perusal of Clause 2.3, 3.1 of FBA entered into between the parties would make the things clear and which may be reproduced as under:

2.3 It is specifically agreed that an amount of Rs. 25,000/- shall be treated as Earnest Money. The earnest money shall be liable to be forfeited in the event of withdrawal of allotment by the Allottee/Buyer and/or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the Allottee/Buyer, without any interest and such refund shall be made only when the Said Flat is re-allotted/ sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/buyer.

3.1 Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having

timely complied with all its obligations, formalities or documentation, as

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prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs. 5.00/- (Five rupees Only) per sq. ft. of area of the Flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier.

8. It is evident from a perusal of the abovementioned provisions of FBA that the construction of the project was to be completed within a period of 4 years from the date of grant of environment clearance i.e. 12.07.2016 with a grace period of 6 months. However, an option was given to the allottee to withdraw from the project prior to the due date by forgoing a sum of Rs. 25,000/- as earnest money. A similar provision to Clause 2.3 is there in the Affordable Housing Policy-2013 of the State of Haryana which provides as under: -

It is specifically agreed that an amount of Rs.25,000/- shall be treated as Earnest Money. The earnest money shall be liable to be forfeited in the event of withdrawal of allotment of the Allottee/Buyer and/or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refund to the Allottee/Buyer, without any interest and such refund shall be made only when the said flat is re-allotted/sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/buyer.

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9. So taking into consideration the object of the policy, the terms and conditions entered into between the parties to the dispute, the claimants exercised their option and withdrew from the project. So, it cannot be said that they are not legally entitled to withdraw from the project and request for cancellation of the allotted unit. Thus, the plea advanced by the respondent-builder is devoid of merit.

10. The second plea advanced on behalf of the respondent builder is that due to *force majeure*, it was unable to complete the project and hand over the possession of the allotted unit to the complainants. But again the plea advanced in this regard is devoid of merit. In case of **DLF Universal Ltd & Anr Vs Capital Greens Flat Buyers Association** etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020, it was observed by the Hon'ble Apex Court of the land that delay in approval of building plans and issuance of stop work orders as a result of fatal accidents during the course of construction being *force majeure* conditions cannot be taken into consideration in achieving timely completion of contractual obligations. Even, there was also an exit offer given to the flat buyers on two occasions by the builder and which also resulted in delay in completing the project. So all these circumstances were not considered sufficient for invoking *force majeure* conditions which resulted in payment of delayed possession charges to the allottees by the builder.

11. Lastly, the respondent took a plea that the complaint filed against it is pre-mature as the rules framed by the State of Haryana under the Act of 2016 are under challenge before the Hon'ble Apex Court of the land. But again the plea advanced in this regard is devoid of merit. No doubt, the Hon'ble Punjab & Haryana High Court affirmed the validity of the rules framed by the State of Haryana under the Act of 2016 but that order has admittedly been stayed

by the Hon'ble Apex Court of the land. So, in view of that there is *status qua*

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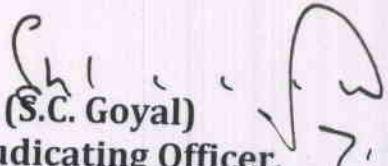
ante. Thus, filing of complaint and proceeding with the same is no bar. So, the plea advanced in this regard is also devoid of merit.

12. Thus, in view of my discussion above, the complaint filed by the complainants seeking refund of the deposited amount with the respondent is hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued to the respondent.

i) To refund the amount of Rs.7,48,799/- minus Rs.25,000/-to the complainants within a period of 90 days and failing which it would be liable to pay interest @ 9.30% p.a. from that upto the date of actual realisation.

13. File be consigned to the Registry.

07.04.2021


(S.C. Goyal)
Adjudicating Officer, 7.4.21
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 16.04.2021