

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

Complaint no. : 5117 of 2019

Date of decision : 31.08.2021

CHETANA ANAND.
R/O : 17/114, Block No. 17,
Subhash Nagar,
New Delhi-110018

Complainant

Versus

1. REVITAL REALITY PVT. LTD.
ADDRESS : 1114, Hemunkt Chambers
89, Nehru Place, New Delhi-110019
2. M/S SUPERTECH LIMITED
ADDRESS: Supertech House, B-28/29,
Sector-58, Noida-201301
3. M/s PNB HOUSING FINANCE LTD.
ADDRESS : 9th Floor, Antriksh Bhawan,
22 Kasturbha Gandhi Marg,
New Delhi-110001

Respondents

APPEARANCE:

For Complainant:
For Respondent No. 1 & 2:
For Respondent No. 3:

Harshit Batra (Adv)
Brighu Dhami (Adv)
Venkat Rao (Adv)

ORDER

1. This is a complaint filed by Chetna Anand (also called as buyer) 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 respondents/promoters.
2. As per complainant, on 02.03.2016, she booked a flat in project "**Supertech Basera**", situated at sector-79, 79 B, Gurugram. She made payment of Rs 96,425 as booking amount. The respondent vide offer of allotment letter dated 26.03.2016 allotted a unit admeasuring 546 sq. ft. for a total consideration of Rs 19,98,408 including BSP, EDC, IDC etc.
3. The respondent had assured that buyers agreement will be executed within 30 days from the offer of allotment. On 12.05.2016, complainant received a letter seeking permission for mortgage of complainant's unit for providing her loan from respondent no. 3. A tripartite agreement was executed between the parties.
4. As per the Clause 3.1 of buyer's agreement, the possession of the unit was proposed to be delivered by the developer to the allottee within 4 years from the date of approval of building

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plan or grant of environment clearance, whichever is later, with grace period of 6 months. In this way, the possession ought to have been delivered by 12.01.2021 but respondent failed to complete the construction work and consequently failed to deliver the same till date.

5. As per the payment plan opted by the complainant, she made timely payment of Rs Rs 15,42,588, i.e. 96 % of entire agreed consideration, along with miscellaneous and additional charges etc, but to her utter dismay, the possession of the apartment has not been delivered in finished manner as agreed in buyer's agreement. When she visited the site, the construction work was not in progress.
6. The respondent no. 3 failed to investigate the status of the project prior to disbursement of funds. Same (respondent no. 3) in connivance with respondent no. 1 and 2 disbursed the loan amount without investigating or inspecting and analysing the status of the project.
7. The respondent no. 1, has committed gross violation of the provisions of section 18(1) of the Act by not executing the buyers agreement and not handing over the timely possession of the flat in question. She(complainant) is forced to file present complaint, seeking refund of entire amount of Rs 15,42,588 along with interest from the date of respective deposits till its actual realisation, Rs 200000 towards

harassment and mental agony, Rs 1,00,000 towards cost of litigation.

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

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	"Supertech Basera", Sector 79, 79 B Gurugram, Haryana
2.	Project area	12.10 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	163 & 164 dated 12.09.2014 valid up to 11.09.2019
5.	Name of licensee	M/s Revital Reality Pvt. Ltd.
6.	RERA Registration	Registration No. 108 of 2017 dated 24.08,2017
UNIT DETAILS		
1.	Unit no.	Flat No. 1009, Tower 10
2.	Unit measuring	546 sq. ft.
3.	Date of Booking	02.03.2016
4.	Offer of Allotment	26.03.2016 (Pg. No. 19)
5.	Date of Buyer's Agreement	Not executed
6.	Due Date of Delivery of Possession As per Clause No. 9.1: The possession of the said premises	12.01.2021



	is proposed to be delivered within 4 years from the date of approval of building plans or grant of environment clearance whichever is later with grace period of 6 month.	
7.	Environment Clearance	12.07.2016
8.	Delay in handing over of possession till date	7 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 19,98,408/-
10.	Amount paid by the complainant	Rs 15,42,588

9. The respondent contested the claim by filing a reply dated 29.06.2021. It is averred that complainant has executed buyer's agreement 07.06.2016. The respondent has developed various prestigious projects in the National Capital Region. Delay in possession is not due to any act of omission or commission on part of respondent but the same was beyond the control of respondent, which can be categorised as 'force majeure' circumstances. Moreover, shortage of labour, building material, demonetisation and orders passed by the statutory authorities created impediments in the pace of construction of the project and every effort is being made to complete the project and to handover possession of the

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allotted units to various allottees including the complainant. It was denied that the complainant is entitled to refund of the amount deposited with it.

10. It is further pleaded that Covid-19 had devastating effect on the world wide economy. There was complete lockdown during the year 2020 and which resulted the stoppage of construction activities in the NCR area. Due to government imposed lockdowns there has been complete stoppage on all construction activities in the NCR area till end of year 2020. This fact has also been acknowledged by the Government of India as well as the Hon'ble Authority, Gurugram. The latter vide orders dated 26.05.2020 granted extension for a period of 6 months for on-going projects. The Ministry of Housing and Urban Affairs, Government of India has also allowed extension of 9 months vis-)-vis all licence approvals of completion dates of housing projects under construction expiring post 25.03.2020 vide its Notification dated 28.05.2020.

11. According to respondent, if the relief of refund is granted to the complainant, then it would hamper the progress of the project, which is near completion. Contending all this, respondent prayed for dismissal of complaint.

12. The respondent no. 3 contested the complaint by filing a reply dated 22.03.2021. The plea of this respondent is that the adjudicating officer lacks the jurisdiction to entertain the complaint against the respondent no. 3, as section 31 of RERA Act, 2016 mandates filing of complaint only against any promoter, allottee or real estate agent. The complainant had

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approached the respondent to avail loan for the purchase of subject unit and accordingly tripartite agreement was executed between parties. As per clause F of the tri-partite agreement, it is the obligation of complainant to repay the loan which shall be a distinct and independent obligation independent of any dispute with respondent no. 1 and 2. The complainant is trying to wriggle out her obligations towards the repayment of loan by filing present complaint and misrepresenting and manipulating facts.

13. True, if terms of tripartite agreement are taken into consideration, the complainant authorised respondent no. 3 to pay loan amount to respondent no. 1 (developer) which was done by same. There appears no conspiracy among said respondents, as alleged by the complainant. Respondent no. 3 was not a necessary party for due decision of this matter.
14. It is not in dispute that the complainant was allotted a unit i.e. an apartment measuring 473 Sq. Ft. (carpet area) in project "BASERA" an Affordable Group Housing Project. Copy of Flat Buyers' Agreement allegedly entered between the complainant and respondent no. 1 has been put on file. If same is taken as true the respondent had agreed to hand over possession of booked unit within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. Although, according to respondent, the environment clearance of the project was received from competent authority on 12.07.2016, but no evidence is adduced in this regard. Even if said date is taken

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as true, due date of handing over possession comes to 12.07.2020.

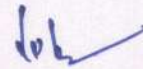
15. This forum cannot ignore ^{the} the fact that COVID-19 showed its effect in India after March 2020. Even the Government was forced to impose lockdown for sometime, with effect from 23.03.2020. In this way, the respondent was entitled to have some relaxation. According to complainant, the project or unit in question is nowhere near completion. Construction work is in initial stage. Despite being asked, learned counsel for respondent could not clarify the stage of construction or even the likely date of handing over possession of unit in question to the complainant. It is submitted that construction work is in progress and possession will be handed over to the complainant whenever the unit is complete. This is very vague reply. It is well settled that a buyer cannot be made to wait for indefinite period to get possession of his/her dream house. Considering the fact even counsel for respondent is not in a position to tell tentative date till when unit in question will be ready for handing over possession to the buyer i.e. complainant.

16. Complaint in hands is allowed and respondent is directed to refund the amount received from complainant i.e. Rs.15,42,588/- within 90 days from today alongwith interest @ 9.30% per annum from the date of receipt of payment till

its realization. The respondent is also burdened with cost of Rs. 50,000/- to be paid to the complainant.

File be consigned to the registry.

31.08.2021

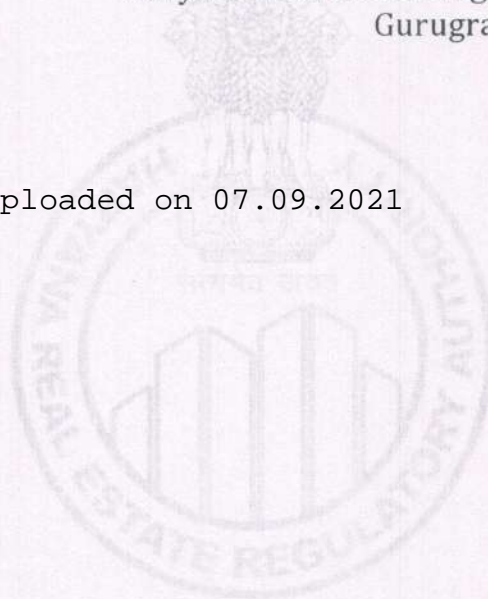


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 07.09.2021



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