

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

Complaint no. : 4891 of 2020

Date of decision : 20.09.2021

MUKUL SHARMA
R/O : 111, Near
Shivam Hospital,
Sector-30, Gurugram
Haryana- 122001

Complainant

Versus

REVITAL REALITY PRIVATE LIMITED
ADDRESS : 1114, First Floor,
Hemkunt Chamber, 89,
Nehru Place, New Delhi-110019

Respondent

APPEARANCE:

For Complainants:

Sukriti Kapoor (Adv)

For Respondent:

Brighu Dhami (Adv)

ORDER

1. This is a complaint filed by Mukul Sharma (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



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- The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainant, on 27.11.2018, he booked a flat in affordable group housing residential floor type project **The Valley** situated at sector-78 Gurugram and paid Rs 1,15,000 as booking amount. The respondent issued an offer of allotment letter dated 02.03.2019 and allotted a unit No. G-205, admeasuring 636 sq. ft. for a total consideration of Rs 23,16,500 including BSP, PLC and EDC, etc. A buyer's agreement executed on 24.06.2019.
 3. As per clause 8.1 of buyer's agreement, the possession of the said premisses was proposed to be delivered by the developer to the allottee within four years from the date of approval of building plan or grant of environment certificate, whichever is later. The respondent has not completed the construction till date.
 4. The complainant has paid Rs 8,77,415 as per payment plan opted by the him and as per the demand raised by the respondent, which is duly acknowledged by respondent.
 5. The complainant had opted for cancellation of unit due to his personal reasons. The complainant sent intimation of cancellation vide affidavit dated 27.07.2020 but respondent failed to initiate the cancellation of unit and failed to refund the amount paid by the complainant. Complainant has even agreed for forfeiture of Rs 25000 as per terms of buyer's agreement.



6. The respondent has failed to refund the amount, despite request by the complainant. The latter is thus, forced to file present complaint, seeking refund of entire amount paid by him after deduction of Rs 25,000 along with interest at rate of 10 %, Rs 10 lacs towards compensation and Rs 1,00,000 towards cost of litigation.
7. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name	Supertech The Valley
2.	Project Location	Sector 78, Gurugram
3.	Nature of Project	Affordable Group Housing
4.	DTCP License No.	45 of 2018 valid upto 28.06.2023
5.	Area of Project	9.0625 acres
6.	Name of License holder	Revital Reality Pvt. Ltd. Kanwar Singh Surat Singh Satbir
7.	HRERA Registration	Registered vide registration no. 20 of 2018
UNIT DETAILS		
1.	Unit no.	G-205
2.	Unit measuring	636 sq. ft.

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3.	Date of Booking	27.11.2018
4.	Date of Offer of Allotment Letter	02.03.2019
5.	Date of Buyer's Agreement	24.06.2019
PAYMENT DETAILS		
6.	Total sale consideration	Rs 23,16,500
7.	Amount paid by the complainants	Rs 8,77,415

8. Respondent contested the claim by filing written reply. All averments of complaint are vehemently denied. According to it, as per the terms of agreement, the project was to be completed within four years from the date of approval of building plan or grant of environment certificate, whichever is later. However the date of delivery of possession is to be extended due to covid-19 and other force majeure events. The covid-19 had devastating effect on construction activity and also resulted into shortage of labour. Further, the Supreme Court vide its order dated 04.11.2019, imposed a blanket stay on all construction activity in Delhi-NCR region. The construction work is in full swing, and it will be completed by October 2022. It is claimed further that the delivery of possession of allotted unit is subject to payment of all dues by the complainant.

9. Moreover, complainant himself has admitted that he wants to cancel the booking due to his own personal reasons and not on

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account of any deficiency in service or delay on the part of respondent. The cancellation of booking is governed by the clause 8.1.4 read with 8.1.5 of the agreement and respondent is entitled to forfeit the forfeitable amount as per the terms of agreement. The grant of refund at such later stage will have adverse effect on the progress of project and interest of other allottees. Contending all this respondent prayed for dismissal of complaint

10. It is not in dispute that complainant was allotted a unit no. G-205 admeasuring 636 sq. ft. in project **The Valley** an Affordable Group Housing Project The Haryana Government through its Town and Country Planning Department issued Gazette notification on 19th August 2013 No. PF 27/48921. The Governor of Haryana has been pleased to notify a comprehensive 'Affordable Housing Policy-2013' under the provisions of Section 9 A of The Haryana Development and Regulation of Urban Areas Act, 1975 and any other corresponding statute, governing development of group housing colonies. It is a special policy, for allotment of affordable houses. The object to launch this policy is mentioned as "to encourage the planning and completion of "Group Housing Projects" wherein apartments of 'pre-defined size' were made available at 'pre-defined rates' within a 'Targeted time-frame' as prescribed under the present policy to ensure increased supply

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of 'Affordable Housing' in the urban housing market, to the deserving beneficiaries".

11. Although the Real Estate (Regulation and Development) Act, 2016 came into force w.e.f 1st may, 2016. In this way, this Act came into force after aforesaid notification, even then aforesaid notification was issued for specific object as described above. While, the Real Estate (Regulation and Development) Act, 2016 is a wider act, governing development and regulation of real estates no provision of affordable housing policy is contrary to the provisions of said act and no provision of it has been repealed by the legislature. Due to all this, in my opinion despite having been launched prior to the Act, being specific policy, it is still enforceable.

12. Clause 5 (iii) (h) of notification No. PF 27/48921 referred above states that in case of surrender of flat by any successful applicant, an amount of Rs. 25,000/- may be deducted by the coloniser. Another notification No. PF- 27/15922 was issued by Haryana Govt. on July 5, 2019 Clause no. 4 (a) of this notification provides that in Clause 5 (iii)(h) of policy dated 19.08.2013, the words "in case of surrender of flat by any successful applicant, an amount of Rs. 25000/- may be deducted by the colonizer", shall be substituted as under:-

"On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following:-

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Sr. no.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil;
(bb)	Upto 1 year from the date of commencement of the project:	1% of the cost of flat;
(cc)	Upto 2 years from the date of commencement of the project:	3% of the cost of flat;
(dd)	After 2 years from the date of commencement of the project:	5% of the cost of flat;

Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time."

13. It leaves no option to the colonizer but to refund the amount paid by an allottee, after deducting Rs. 25,000/- and the amount as mentioned Clause no. 4 of notification dated 05.07.2019, if buyer opts to withdraw his/her amount.

14. Learned counsel of complainant submitted that his client simply wants to withdraw from the project and does not insist on contentions of default of respondent. In view of provisions of said policy as reproduced above, the colonizer is bound to refund the amount when buyer opts to withdraw from the project, without any condition subject to some deductions as mentioned above. The respondent did not refund the amount of complainant, despite latter's request in this regard, sent through letter/affidavit dated 27.07.2020

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15. I allow complaint in hands. Respondent is directed to refund the amount already received from the complainant, after deducting forfeitable amount as per said policy, within 90 days from today, along with interest @ 9.3 % from 27.07.2020 till realization of amount. Respondent is also burdened with cost of litigation of Rs 50,000 to be paid to complainant.

File be consigned to the Registry.

20.09.2021



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

Judgement uploaded on 25.09.2021.

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