



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

Complaint No. : 1352/2021

Date of Decision : 15.07.2021

Sh. Sumit Kumar Tiwari
Plot No. 248, Ground Floor,
Rajeev Colony, NH8
Gurugram- 122001

Complainant

V/s

M/s Revital Reality Pvt. Ltd.
1114, 11th Floor, Hemkunt
Chambers 89, Nehru Place,
New Delhi- 110018.

Respondent

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

Present:

For Complainant:

Mr. Sandeep Singh, Advocate

For Respondent

Mr. Bhrigu Dhami, Advocate

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ORDER

This is a complaint under Section 31 read with section 71 of the Real Estate (Regulation and Development) Act, 2016 (also referred as the Act) filed by Sh. Sumit Kumar Tiwari, seeking refund of Rs 3,73,195/- (Three Lakh Seventy Three Thousand One Hundred Ninety Five) deposited for booking of a residential unit in the project known as 'Supertech The Valley' situated in Sector 78, Gurugram, against total sale consideration of Rs 14,78,000/- (Rupees Fourteen Lakhs seventy Eight Thousand Only) alongwith interest @ 15% per annum.

2. According to the complainant, the respondent/promoter launched a project in the name and style of "Supertech The Valley" under the affordable Group Housing Scheme-2013 of Government of Haryana. Being persuaded by some marketing person belonging to the respondent, he booked a residential unit bearing No. E-407 in said project, having an area measuring 457 sq. ft. after paying a sum of Rs. 73,900/- against total sale consideration of Rs. 14,78,000/-.

3. He (complainant) was required to pay 20% of sale consideration within a period of 10 days from the date of issuance of allotment letter, which was issued on 02.03.2019, 75% of consideration amount was to be paid in six monthly equated installments and remaining amount of Rs. 2,95,600/- was to be paid by 12.03.2019. The allotment-cum-agreement was to be executed within 30 days from the date of payment of 25% of the basis sale price amounting to Rs. 2,95,600/-, which was duly paid by the complainant. Despite payments made as per schedule, respondent failed to execute allotment agreement, which was ultimately executed on 22.07.2019 after payment of Rs 3695/-.

4. Particulars of case are reproduced hereunder in tabular form:

| | | |
|-----------------------------|--|--|
| I. | Name of the project | 'Supertech The Valley Project' situated in Sector 78, Gurugram |
| II. | Location of the project | -Do- |
| III. | Nature of the project | Residential |
| Unit related details | | |
| IV. | Unit No. / Plot No. | E-407 |
| V. | Tower No. / Block No. | E |
| VI | Size of the unit (super area) | Measuring 457 Sq. ft |
| VII | Size of the unit (carpet area) | Measuring 357 Sq. ft |
| VIII | Ratio of carpet area and super area | -DO- |
| IX | Category of the unit/ plot | Residential |
| X | Date of booking(original) | 27.02.2019 |
| XI | Date of Allotment(original) | 02.03.2019 |
| XII | Date of execution of BBA | 15.06.2019 |
| XIII | Due date of possession as per BBA Clause 26 | |

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|-----------------|--|--|
| 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 BBA | @ Rs. 5/- per sq. feet per month for delay |
| Payment details | | |
| XVI | Total sale consideration | Rs. 14,78,000/- |
| XVII | Total amount paid by the complainants. | Rs. 3,73,195/- |

5. Respondent contested the claim by filing written reply. The facts that the project, "The Valley" was launched by it, complainant booked a unit/apartment bearing No. 0407 in tower 'E' having an area of 457 Sq. ft. for total sale consideration of Rs. 14,78,000/- are not disputed by the Respondent. As per clause 3.1 of said agreement, the project was to be completed within four years from the date of approval of building plans or grant of environment certificate, whichever is latter.

6. Respondent says that the EC of the project was received on 29.07.2019, clause 2.2 says that the allottee is liable to payment in terms of payment plans as per the agreement and further that clause 1.1 of the said agreement provides for possession of the apartment to be given to the allottee, after payment of all dues.

7. It is not denied by the respondent that completion of the project got delayed to some extent. But according to it, it was due to Pandemic of Covid-19 which gripped the entire nation since March, 2020 The Government of

India has categorised this event as Force Majeure. According to the respondent, the construction of project is in full swing now. Delay whatsoever has been caused, same is due to government's imposed lockdown, which stalled the construction activities in India including in Gurugram, where this project is situated. The respondent opposed the refund of the amount to the complainant and requested for dismissal of complaint with costs.

8. As mentioned above, according to the respondent the complainant failed to make payment of dues as payment plan. The limitation for completion of project was to be started from the date of taking EC or approval of building plans whichever is latter, and EC of the project was received on 29.07.2019. Even according to said fact the project is to be completed till 28.07.2023. That time is still to come. Learned counsel for the respondent submits that his client is in try to complete the project, within time, subject that allottees pay their dues in time.

9. Learned Counsel for respondent referred following cases decided by Haryana Real Estate Regulatory Authority, Gurugram

| Particular | Complaint No. | Date of Decision |
|--|---------------|------------------|
| Sh. Krishna Wats v. M/s CHD Developers Ltd | 578 of 2019 | 30.05.2019 |
| Sh. Aman Sood v. BPTP Ltd. | 1194 of 2018 | 13.03.2019 |
| Sh. Abhishek Agarwal & Anr. V. M/s Cosmos Infra Engineering India Pvt. Ltd | 1834 of 2018 | 10.04.2019 |
| Sh. Parmod Kumar v. S.S Group Pvt. Ltd | 63 of 2018 | 22.11.2018 |
| Sh. Puneet Dhar v. Supertech | 743 of 2018 | 18.12.2018 |
| Sh. Rajiv Kohli v. Supertech Ltd. | 1603 of 2018 | 13.03.2019 |

| | | |
|--|--------------------|-------------------|
| Renuka Sharma v. Supertech Ltd. | 732 of 2018 | 15.03.2019 |
|--|--------------------|-------------------|

10. The complainant simply wants refund of amount paid by him. Only plea of the complainant raised before this forum is that he could not get the loan sanctioned from any financial institution, due to bad reputation of the respondent and is unable to pay any more amount without loan.

11. It is not in dispute that the complainant was allotted a unit i.e. an apartment measuring 357 Sq. Ft. (carpet area) 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 of 'Affordable Housing' in the urban housing market, to the deserving beneficiaries".

12. 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

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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.

13. 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 colonizer. 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:-

| 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."

14. 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

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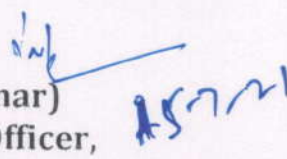
Clause no. 4 of notification dated 05.07.2019, if buyer opts to withdraw his/her amount.

15. Although the complainant has blamed the respondent/colonizer for not fulfilling his promise to facilitate the loan for complainant. I do not find much merit in this contention of complainant and also the allegation that the respondent had a bad reputation, due to which financial institutions did not disburse loan to him. Nothing on record to verify that respondent undertook to facilitate any loan to the complainant, rather as per Clause 3.4 (i) of agreement to sell, it was for allottee to arrange/avail loan facility from bank/financial institution/agency on its own and the promoter shall not be responsible for sanctioning of loan.

16. Learned counsel of complainant asserted again and again 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. I allow complaint in hands. Respondent/colonizer is directed to refund the amount already paid by the complainant, after deducting forfeitable amount as per said policy, within 90 days from today, failing which same will be liable to pay interest @ 9.30% p.a., till realization of amount.

17. Announced in open Court today i.e. 15.07.2021.

18. File be consigned to the Registry.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram