

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

Complaint no. : 3048 of 2019

Date of decision : 03.09.2021

YOGESH MOHAN
R/O H. N. 168, Sector-3,
R.K. Puram, New Delhi-110023.

Complainant

Versus

M/s T.S. REALTECH
ADDRESS: E-26, L.G.F.
Panchsheel Park
New Delhi- 110017

Respondent

APPEARANCE:

For Complainant: Daljit Singh Dayal (Adv)

For Respondent: Kamal Dhiya (Adv)

ORDER

1. This is a complaint filed by Sh. Yohesh Mohan (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 respondent/promoter.

2. As per complainant, he booked a shop in respondent's project "**Iris Broadway**", situated at sector-85-86 Gurugram on 11.04.2013 and made payment of Rs 9,00,000 as booking amount. On 01.06.2013, the respondent allotted a shop admeasuring 565.20 sq. ft. for a total consideration of Rs 64,99,800 including BSP, EDC, IDC etc. A space buyer agreement (SBA) was executed on 23.07.2013
3. As per clause IV, possession of unit was proposed to be delivered within 42 months from the date of receipt of all permissions and commencement of construction work. The respondent failed to complete the construction/development work and consequently failed to deliver the possession of the unit.
4. He (complainant) paid all dues as demanded by the respondent from time to time ^{total} i.e. Rs 26,96,325. The due date of possession was in 2016, but looking at the negligible progress at the site and due to financial constraints of complainant, he (complainant) vide his letter dated 22.02.2015 (Annexure P-9) asked for refund of money paid by him. Despite request for refund of amount, the respondent sent a demand notice dated 20.08.2015 and raised of Rs

32,72,866. Further, the respondent after one year of the said request of refund, cancelled the unit vide dated 22.02.2016, on account of default of payment. Respondent deducted 60 % of paid amount. It is stated that only Rs 16,65,432 is refundable (Annexure P-11). The letter was followed by letter of Director of respondent company, dated 11.10.2018, wherein respondent accepted that there has been delay on its part and refund was not made due to sudden in-house circumstances.

5. Contending that the respondent has committed gross violation of the provisions of section 18(1) of the Act, the complainant prayed for refund of entire amount of ~~Rs 26,96,325~~ Rs 26,96,325 alongwith ~~rate of~~ interest as per Rules of HRERA.
6. The particulars of the project are reproduced here as under in tabular form:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Iris Braodway", Sector 85-86, Gurugram, Haryana
2.	Project area	2.8 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	40 of 2012 dated 22.04.2012 valid up to 21.04.2020
5.	Name of licensee	T.S Realtech



6.	RERA Registered/ not registered	Registered vide no. 168 of 2017 dated 29.08.2017
UNIT DETAILS		
1.	Unit no.	G-122 (Pg. no. 38 complaint)
2.	Unit measuring	567.20 sq. ft. sq. ft. (Page No. 38)
3.	Date of Booking	11.04.2013
4.	Date of Buyer's Agreement	23.07.2017 (Pg. No 31 of compliant)
5.	Due Date of Delivery of Possession As per Clause No. IV : possession of unit was proposed to be delivered within 42 months from the date of receipt of all permissions and commencement of construction work (Page No. 37 of the complaint)	10.03.2017 (Commencement of construction: 10.09.2013)
6.	Occupation Certificate	29.03.2019 (Annexure R5)
PAYMENT DETAILS		
7.	Total sale consideration	Rs 64,99,800 /-
8.	Amount paid by the complainants	Rs 26,96,325
9.	Payment Plan	Construction linked plan

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7. The respondent contested the complaint by filing a reply dated 03.02.2021. The respondent took preliminary objection that Adjudicating Officer lacks jurisdiction to entertain this complaint. It denied that construction of project has not started. It is contended that complainant had committed various defaults in making outstanding payments, despite various demand letters. The complainant vide letter dated 27.02.2015, showed his financial constraints to make payment towards the allotted unit. The allotment of the unit has been cancelled, due to continuous default on the part of complainant, in making payment of outstanding amount. The complainant is entitled to get the refund, after deduction as per terms of agreement, without any interest. Refundable amount i.e Rs 16,65,432 was sent to complainant on 31.12.2018 (Annexure R6) but he (complainant) was not willing to accept said amount.
8. It is averred that a space buyer's agreement was entered between the parties, much prior to Act of 2016. ^{Sale} Act, 2016 and Rules, 2017 are not applicable in this matter.
9. Further, occupation certificate for block A (phase-I) where the allotted unit is located, has been received vide letter dated 29.03.2019, but complainant due to his own inability to pay the outstanding amount, has cancelled the unit and sought refund.
10. The respondent denied that complainant has made payment of Rs 26,96,325 as contended. According to it, complainant has

paid only Rs 19,45,000 and the remaining amount of Rs 7,51,325 was adjusted in the account of complainant, which was the commission of the real estate broker.

11. Contending all this, respondent prayed for dismissal of compliant.
12. I have heard the learned counsels for the parties and perused the record.
13. So far plea of respondent that Act of 2016 or Rules 2017 are not applicable in this case are concerned, admittedly it was ^{an} ongoing project. It is ^{not} plea of respondent that completion received when ^{^ Certificate had been} this Act came into force. The respondent was obliged to apply for registration within 3 months. In this way, provisions of Act of 016 are well applicable.
14. The respondent has admitted that complainant had requested for cancellation of unit and sought refund vide his letter dated 27.02.2015. Despite complainant's request for cancellation, respondent raised demand of Rs 32,72,846, dated 20.08.2015 which was unjust.
15. As stated above that respondent offered refund of Rs 16,65,432 to the complainant out of total payment of Rs 26,96,325. There is no evidence to verify that complainant had agreed for commission for broker and that Rs 7,51,325. The said refund amount cannot be said to be reasonable. The respondent claimed that deduction has been made as per the terms of the agreement. The Government of Haryana issued a notification on 05.12.2018 titled as Haryana Real Estate Regulatory Authority, Gurugram, (Forfeiture of earnest money by builder)

Regulations, 2018 wherein it has been stated that forfeiture of the earnest money shall not exceed more than 10 % of consideration amount of real estate i.e. apartment /building as the case may be. In all cases where the cancellation of the unit is made by the builder in unilateral manner or buyer intends to withdraw from the project, any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

16. It is evident from the perusal of demand letter dated 20.08.2015, that complainant has made total payment of Rs 26,96,325 till August 2015. While cancelling allotment in question, the respondent could forfeit some reasonable amount but not more than 10 % of sale consideration.
17. Complaint in hands, is accordingly allowed and respondent is directed to refund the amount paid by the complainant after deducting forfeitable amount as per Regulations, 2018 . Same is also directed to pay interest @ 9.3 % p.a. from the date of request of cancellation i.e. 22.02.2015, till realisation of amount and also cost of litigation Rs 50,000 ^{the} ~~is payable~~ to complainant.

03.09.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 11.09.2021.