BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 2235 of 2021
First date of hearing: 05.07.2021
Date of decision : 24.01.2023

Sonu Pal
R/o: - House No. 245, C/o Yashpal Yadav, Village-Kadipur, Opp. Sector- 10A, Near Lions Public School, Gurugram, Haryana- 122006 **Complainant**

Versus

1. M/s Revital Reality Private Limited.
Regd. Office at: 1114, 11th Floor, Hemkunt Chamber, 89, Nehru Place, New Delhi- 110019.
2. Masion Infratech Private Limited.
Office at: - 957-C, 9th floor, Tower B-1, Spaze I Tech Park Sohna Road, Sector- 49, Gurugram- 122018 **Respondents**

CORAM:
Shri Vijay Kumar Goyal **Member**
Shri Ashok Sangwan **Member**

APPEARANCE:
Sh. Sukhbir Yadav (Advocate) Complainant
Sh. Bhrigu Dhami (Advocate) Respondent No. 1
None Respondent No. 2

ORDER

1. The present complaint dated 30.04.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in

short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details	
1.	Name of the project	"Supertech Basera" sector-79&79B, Gurugram	
2.	Project area	12.11 area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014

	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	
9.	Unit no.	0906, 9th floor, tower/block- 3, (Page no. 44 of the complaint)	
10.	Unit measuring	495 sq. ft [carpet area] 97 sq. ft. [balcony area]	
11.	Date of execution of booking application form	30.09.2018 [As per averment of complainant page 5 of the complaint]	
12.	Date of execution of flat buyer's agreement	Not executed	
13	Possession clause	**4. Allotment** **ii.** The company shall endeavor to allot all apartment/ unit to the Applicant(s) in one go within four months of the sanction of the Building Plans or receipt of environment clearance, whichever is later. (Hereinafter referred to as the "date of commencement of project") **6. Possession** The possession of the apartment/unit will be handed	

		over within 4 years from the date of commencement of the project, subject to force majeure(s). (Page nos. 26 and 27 of the complaint)
14.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) whichever is later.]
15.	Date of approval of building plans	19.12.2014 [as per information obtained by the planning branch]
16.	Date of grant of environment clearance	22.01.2016 [as per information obtained by the planning branch]
17.	Total sale consideration	Rs.20,28,500/- (As per payment plan page 45 of the complaint)
18.	Total amount paid by the complainant	Rs.3,01,425 /- (As per receipt information page 32, 35, 36 and 38 of the complaint)
19.	Occupation certificate	Not obtained

20.	Delay in handing over possession till the date of filing of this complaint i.e., 30.04.2021	1 year 3 months and 8 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That in September 2018, the complainant was approached by respondent no. 2, through Mr. Pankaj Rathor, Director of M/s Maison Infrateh Pvt. Ltd. (real estate agent/broker) who represented himself as an authorized agent of the respondent /builder for booking of a unit in Supertech Basera, being developed at Sector-79, 79B, Gurugram Manesar Urban Complex under the Affordable Group Housing Policy of 2013.

II. That on 30.09.2018, the complainant booked a 2 BHK flat in the sad project and signed a pre-printed application form and issued a cheque of Rs.1, 01,425/- as booking amount i.e., 5% cost of flat for category 2 (2BHK) Type (B) flat through respondent no. 2 i.e., real estate agent.

III. That the complainant on 29.10.2018, 02.11.2019 and 04.01.2019 paid Rs.25,000/-, Rs.75,000/- and Rs.1,00,000/- in cash to respondent no.2 against confirmation of booking of builder floor 2BHK, Type-2 in Supertech Basera, as per the payment

acknowledgment letter issued by respondent no.2 respectively in his favour.

IV. That though till April 2019, he had already paid Rs.3,01,425/-, more than 14% of the cost of the flat to both respondents, but the allotment/draw was never confirmed, as per attached email correspondences of complainant with both of them.

V. That since 25.04.2019 up to 27.02.2020, the complainant was continuously following up with both the respondents vide emails and telephonic conversations about the date of draw and allotment of flat. Unfortunately, the respondents have neither replied nor informed the complainant about the confirmation of allotment of flat in his favour even after lapse of more than 18 months from the date of booking by signing the pre-printed application form on 30.09.2018.

VI. That due to too much delay in allotment of flat/draw under affordable housing policy, he requested the respondents to refund the total amount of Rs.3,01,425/-received by them against his booking in the said project. But the respondents neither responded nor refunded the total amount of Rs.3,01,425/-already received by them.

VII. That however for the first time on 21.07.2020, the respondent /promoter sent an email to the complainant and asked to verify the details as per enclosed attached file of booking form clearly stating

about the draw dated 08.07.2020, order no. STC/Booking/2020/3085228, flat/Space (R034T300906/Flat#0906), tower/block-tower 3, at 9th floor, type 2 bed large, admeasuring carpet 495 sq. ft. and balcony 97 sq. ft., BSP of flat Rs.19,80,000/-.

VIII. That in the meantime, the complainant became jobless and faced heavy financial crunch and was unable to pay the balance amount to be paid on allotment of the unit in his favour. Hence he continuously requested both the respondents to refund the total amount of Rs.3,01,425/- after deducting an amount of Rs.25,000/- as per terms & conditions of application form, but all request resulted in vain by both the respondents.

IX. That at last on 15.01.2021, the complaint wrote an email to the respondent/promoter to process further as per allotment and to inform him about the balance payment to be made by him against the said allotment. Thereafter, on 18.01.2021, again the developer sent an email with attachment about provisional booking form, which was replied by the complainant on same day i.e., 18.01.2021 at 3:18 PM with the remark "please clarify provisional booking form, what does it mean that booking is still not confirmed, or it will take more extra time to be confirmed".

X. That on 28.01.2021, the promoter again sent an email about outstanding statement dated 01.12.2020 demanding a sum of Rs.19,47,360/-including taxes against allotment of dwelling unit,

showing the total received amount of Rs.1,01,425/- only from the complainant. To utter surprise, the complainant was astonished about the outstanding statement showing total received amount of Rs.1,01,425/- instead of Rs.3,01,425/- already paid by him to both the respondents against said allotment with the proof of acknowledgment. Further, as per the clause 1(iv) of Affordable Housing Policy 2013, "all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later". But unfortunately, till date, there is no approval of building plans for the said project, as per the information downloaded from the website of DTCP, Govt. of Haryana.

XI. This complaint was filed by the complainant against both the respondents with an apprehension in the mind that both of them are playing fraud and there is something fishy which both are not disclosing to him just to embezzle him hard-earned money. Now a day's, many builders in collusion with agents/brokers are being prosecuted by court of law for siphoning off funds and scraping the project mischievously.

XII. That due to the above acts of both the respondents and the unfair terms and conditions of application form, he has been unnecessarily harassed mentally as well as financially. So, the opposite parties are liable to compensated the complainant on

account of the aforesaid act of unfair trade practice. There is a prima facie case in favour of the complainant and against both the respondents for not meeting then obligations under the Affordable Housing Policy, 2013 and the Real Estate (Regulation and Development) Act, 2016, which makes them liable to answer to this authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

   i. To get refund of entire amount of Rs.3,01,425/-from the respondents with interest @18% per annum from the date of actual receipt of payment till date of realization of actual payment.

   ii. To pay a sum of Rs.50,000/- towards the litigation expenses for filing the complaint.

5. Neither respondent no. 2 put in appearance nor plead any reply despite service of notice.

6. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

7. The respondent contested the complaint on the following grounds: -

   i. That one of its marquee projects is the "Basera", located in Sector 79 and 79B of Gurugram Manesar Urban Complex, Gurugram

Haryana. The Complainant approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to him, sought to book an apartment in the said project.

ii. That he booked an apartment being number No. 0906, tower 03, on 9th floor, having carpet area of 495 sq. ft. for a total consideration of Rs.19,80,000/-.

iii. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the application for allotment.

iv. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.

v. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.

vi. The delay if at all, has been beyond the control of the respondent and as such extraneous circumstances would be categorized as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project. Further, the

delay in construction was on account of reasons that cannot be attributed to the respondent. The flat buyer agreement provides that in case of delay in delivery of Unit for reasons not attributable to the developer/respondent, then it shall be entitled to proportionate extension of time for completion of said project.

vii. That in view of the force majeure clause, it is clear that the occurrence of delay not in control of it, including but not limited to the dispute with the construction agencies employed for completion of the project is not delay on its account of the project.

viii. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before 11.07.2020, with respect to the fact that those environmental clearances were received in January 2016 and including the six-month grace time period. The respondent earnestly endeavoured to deliver the property within the stipulated period but for reasons stated in the present reply, could not complete the same.

ix. That the timeline stipulated under the allotment application was only tentative, subject to force majeure reasons which were beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required.

Evidently, the respondent had availed all the licenses and permits in time before starting the construction.

x. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/ circumstances which were above and beyond the control of the respondent: -

- Shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/ State Government under NREGA and JNNURM Schemes;
- that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

xi. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a

materially adverse affect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such it may be granted reasonable extension in terms of the allotment letter.

xii. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labour and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector and whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the after effects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

xiii. That the complainant has not come with clean hands before this authority and has suppressed the true and material facts from this

authority. It would be apposite to note that the complainant is a mere speculative investor who has no interest in taking possession of the apartment.

xiv. That the completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials and/ or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.

xv. That the enactment of Real Estate (Regulation and Development) Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate market sector. The main

intention of the respondent is just to complect the project within stipulated time submitted before this authority. According to the terms of the builder buyer agreement also, it is mentioned that all the amount of delay possession will be completely paid/adjusted to the complainant at the time final settlement on offer of possession.

xvi. That the respondent further submitted that the Central Government has also decided to help bonafide builders to complete the stalled projects which were not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/ unconstructed projects and deliver the homes to the homebuyers. It is submitted that the respondent/ promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.

xvii. That compounding all these extraneous considerations, the ***Hon'ble Supreme Court vide order dated 04.11.2019***, imposed a blanket stay on all construction activities in the Delhi- NCR region. It would be apposite to note that the 'Basera' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. Further, a complete ban on

construction activities at site invariably results in long-term halt. As with a complete ban, the concerned labor was let off and they travelled to their native villages or look for work in other states, the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.

xviii. The respondent has further submitted that graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.

xix. That the pandemic of covid-19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent was forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the

respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of ***Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors*** has taken cognizance of the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. According to notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, passed by this authority, registration certificate upto 6 months has been extended by invoking clause of force majeure due to spread of corona virus pandemic in the Nation, which beyond the control of respondent.

xx. This authority vide, its order dated 26.05.2020 had acknowledged the Covid-19 as a force majeure event and had granted extension of six months period to ongoing projects. Furthermore, it is of utmost importance to point out that vide notification dated 28.05.2020, the Ministry of Housing and Urban Affairs has allowed an extension of 9 months vis-a-vis all licenses, approvals, end completion dates of housing projects under construction which were expiring post 25.03.2020 in light of the force majeure nature of the Covid pandemic that has severely disrupted the workings of the real estate industry. The pandemic is clearly a 'force majeure' event, which automatically extended the timeline for handing over possession of the apartment.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance*

of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (Civil), 357*** *and reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 and*** wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging*

compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F. I Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

15. From the bare reading of the possession clause of the application for allotment, it becomes very clear that the possession of the apartment was to be delivered by **22.01.2020.** The respondent in its reply pleaded the force majeure clause on the ground of Covid- 19. The High Court of Delhi in case no. ***O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020*** held that *the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the*

Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Thus, this means that the respondent/promoter has to complete the construction of the apartment/building by 22.01.2020. It is clearly mentioned by the respondent/promoter for the same project, in complaint no. 4341 of 2021 (on page no. 73 of the reply) that only 42% of the physical progress has been completed in the project. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainants/allottees by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/ promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit of his own wrong"***. Moreover, there is nothing on the record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

F. II Objections regarding the complainant being investor.

16. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, is not entitled to the protection of the Act and to file the complaint under section 31 of the Act. The respondent

also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.3,01,425/-** towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement cum provisional allotment letter executed between promoter and complainant, it is

crystal clear that he is an allottee(s) as the subject unit allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G. I To refund of entire amount of Rs.3,01,425/- with interest @18% per annum from the date of actual receipt of payment by the respondents till the date of realization of actual payment.

18. The complainant submitted, that in September 2018 he had approached respondent no. 2 i.e., real estate agent for booking a unit in "Supertech Basera" being developed by the respondent/builder. Thereafter on 30.09.2018, he booked a 2 BHK flat in the project of respondent/builder by signing a pre-printed application form and issued a cheque of Rs.1,01,425/- as booking amount i.e., 5% of the cost of the flat through respondent no. 2. The complainant on 29.10.2018, 02.11.2018 and 04.01.2019 also paid an amount of Rs.25,000/-, Rs.75,000/- and Rs.1,00,000/- respectively in cash to the respondent no. 2 to confirm

the booking of the flat. Till April 2019, he had already paid an amount Rs.3,01,425/- i.e., 14% of the cost of the flat to the respondents. The complainant was continuously following up with both the respondents as well as telephonic conversations about the draw of the flat and allotment of the flat but to no avail.

19. For the first time on 21.07.2015, the promoter/developer sent an email to the complainant asking him to verify the details as per enclosed attached file of booking form and also confirmed that a unit bearing no. 0906 on 9th floor, in tower/block- 3, in the project "The Valley" by the respondent/builder for a total consideration of Rs.19,80,000/- has been allotted to him.

20. That in the meantime, the complainant faced heavy financial crunch and thus could not pay the balance amount to be paid with regard to the said unit and hence continuously requested the respondents to refund the total deposited amount of Rs.3,01,425/- after deducting an amount of Rs.25,000/- as per terms and conditions of the application form, but all requests made by him were with no results. It has been confirmed by both the parties that the complainant has paid only an amount of Rs.3,01,425/- out of a total sale consideration of Rs.19,80,000/-.

21. It is pertinent to mention clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 states 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.

22. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent/builder is entitled to forfeit the amount in accordance with amended section 5(iii)(h). The date of commencement of project has been defined under clause1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 22.01.2016.

23. The authority observes that complainant is entitled for refund the deposited amount after deduction of the amount as allowed under Affordable Group Housing Policy 2013 and amended in 2019 which allow for deduction of 1% of the consideration money in addition to Rs.25,000/- as the complainant has been seeking refund after making the application but even before the draw. The respondent no. 2 is

directed to refund the brokerage amount of Rs.2 Lakhs received from the complainant after deduction of 0.5% of the consideration money only.

24. Thus, the respondent was bound to cancel the unit and return the amount as per clause 5(iii) (h) of the policy, 2013.

H. Directions of the authority

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent/promoter is directed to refund the paid-up amount of Rs.1,01,425/- after deduction of 1% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.60% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.

ii. The respondent no. 2 (i.e., real estate agent) is directed to refund the amount of Rs.2 Lakhs received from the complainant after deduction of 0.5% of the sale consideration of the unit.

iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2023

HARERA
GURUGRAM