



**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 5482 of 2019
Date of filing of complaint: 09.03.2020
Order reserved on: 02.05.2023
Order pronounced on: 08.08.2023

Mrs. Renu Bohra
R/o: - V11/4, DLF City Phase- 3, Gurugram - 122002

Complainant

Versus

M/s Revital Reality Private Limited.
Regd. Office at: 1114, 11th Floor, Hemkunt Chamber, 89,
Nehru Place, New Delhi- 110019
Corporate Office at: - Supertech House, B-28&29,
Sector- 58, Noida - 201307

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. K.K Kohli (Advocate)
Sh. Bhrigu Dhami (Advocate)

Complainant
Respondent

ORDER

1. The present complaint 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 provision 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.	Date of approval of building plans	19.12.2014 [as per information obtained by the planning branch]
10.	Date of grant of environment clearance	22.01.2016 [as per information obtained by the planning branch]
11.	Unit no.	1307, 13 th floor, tower/block- 5, (Page no. 35 of the complaint)
12.	Unit measuring	473 sq. ft [carpet area] 73 sq. ft. [balcony area]
13.	Allotment letter	13.04.2016 (Page no. 29 of the complaint)
14.	Date of execution of flat buyer's agreement	27.04.2016 (Page no. 34 of the complaint)
15.	Possession clause	3.1 Possession <i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default</i>



		<p><i>under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier.</i></p> <p>(Page no. 38 of the complaint).</p>
16.	Grace period	<p>Not allowed</p> <p>The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has</p>



		sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent promoter is disallowed in the present case.
17.	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.]
18.	Total consideration sale	Rs.19,28,500/- (As per payment plan page no. 37 of the complaint)
19.	Total amount paid by the complainants	Rs.20,15,001/- (As per alleged by the complainant at page no. 24 of the complaint)
20.	Offer of possession	Not offered
21.	Occupation certificate	Not obtained
22.	Surrender by the allottee	09.05.2019 [Page no. 73 of the complaint]



B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in 2016 the respondent company issued an advertisement announcing an affordable group housing residential complex project namely "Supertech Basera" in a land parcel admeasuring a total area of approximately 12.10 acres situated at Sector 79&79B, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of flats in the said project. The respondent confirmed that projects had got building plans approval from the competent authority.
- II. That the respondent represented to the complainant that they are the leading real estate developer in northern India having several real estate projects. The representatives of the respondent made tall claims about the experience, quality of work and the brand value of the respondent and stated that they would deliver superior quality structures with state-of-the-art facilities and most importantly within the agreed framework of time.
- III. That relying on various representations and assurances given by it, the complainant proceeded to book a flat bearing unit no. 1307, tower 5, 13th floor measuring 1307 sq. ft. (carpet area) and balcony area (73 sq. ft.) in the aforesaid project of the developer for a total sale consideration of Rs.19,28,500/- which includes the basic sale price and other applicable charges and made payment of

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application amount of Rs.96,425/- and the same was acknowledged vide receipt 5003780 dated 31.03.2016. The complainant opted for instalment linked payment plan.

- IV. That vide allotment letter dated 13.04.2016, the complainant was allotted the above-mentioned unit in the aforesaid project of the developer for a total sale consideration of Rs.19,28,500/- which includes the basic sale price and other applicable charges. Further, the respondent also represented that the said flat shall be handed over within a period of 4 years from the date of the execution of the agreement. She booked the flat primarily relying on the respondent assurance *inter alia* that they have already obtained a license for the said development of the project and further that the building plans of the said complex have been approved by the competent authorities. Further, the complainant was assured that since all such requisite sanctions and approvals had been taken, the respondent would be in a position to handover the possession of the aforesaid flat within the time stipulated in the flat buyer's agreement as per clause 3.1 i.e. 4 years from the execution of this agreement, wherein it was specifically stated that all requisite approvals regarding the construction of buildings were duly approved by the requisite authorities before signing off the aforesaid buyer's agreement and on punctual payments of all the demands of instalments which were always paid by the



complainant within the stated time in demand letters. Even otherwise, it is settled law that it is the duty/obligation of the real estate developers like the respondent to plan in advance and obtain necessary requisite permission from the concerned authorities and thereafter promise to deliver the possession of the said flat within the stipulated time. Until then, real estate developers cannot proceed to take money/consideration under the buyers' agreement without having obtained requisite approvals.

- V. That the complainant had duly paid the allotment money of Rs.4,03,177/- by cheque no. 20017 of SBI dated 23.04.2016 and the same was acknowledged by the respondent vide receipt dated 5000488 dated 23.04.2016, and the total amount paid till date was Rs.4,99,602/- which was acknowledged by the respondent in its demand letter dated 01.10.2016. Thereafter, the flat buyer agreement dated 27.04.2016 was executed between both the parties. The first instalment of Rs.2,23,586/- was due on 13.10.2016 and the same was duly paid by the complainant on 10.10.2016. The second instalment of Rs.2,41,062/- was due on 13.04.2017 which was duly paid by the complainant on 11.04.2017 by RTGS vide cheque no. 13810.
- VI. That the respondent also acknowledged the same on 03.05.2019 that the complainant till date had made a payment of Rs.20,15,282/-.



- VII. That the complainant wrote an email dated 09.05.2019 to the representative of the respondent company namely Ms. Disha Chauhan about informing her the condition of his son and asking for the refund of the total amount paid by the complainant. The representative of the respondent company namely Ms. Disha Chauhan replied to the above-mentioned email stating that your request has been noted and they shall update you as per terms and conditions of the allotment letter. Further, Ms. Disha Chauhan asked the complainant to deposit the original documents in the office of respondent company and the same was submitted by the complainant on 15.05.2019. The complainant on the same day also supplied an affidavit as asked by the respondent mentioning the details of payments and asking for the refund.
- VIII. That the complainant wrote an email dated 22.06.2019 to the representative of the respondent company namely Ms. Disha Chauhan herein mentioning that the original documents was deposited with the respondent company as per there requested on 15.05.2019 and asking to expedite the refund procedure, as the complainant is badly in need of money to get her son's treatment done. She again wrote an email dated 29.09.2019 to the representative of the respondent company namely Mr. Mohit Arora asking for the refund of the amount paid by her.
- IX. That the complainant had purchased the flat with intention that after purchase, he will live in his own home. She had paid more than 20 lakhs rupees against the said property. Due to inordinate delay on the part of the respondent caused huge financial losses to complainant.



- X. That due to above acts of the respondent and of the terms and conditions of the flat buyer's agreement, she has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XI. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondents and much more a smell of playing fraud with the complainant and others is prima facie clear on the part of the respondent which makes them liable to answer this authority. That now a day's many builders are being prosecuted by court of law for siphon off the funds and scraping the project mischievously.
- XII. That the complainant was regularly visiting to the office of respondent and making efforts to get the refund. Even several emails have been sent to the respondent company with respect to get the refund as the complainant is in very bad need of money to get his son operated.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).
- i. Direct the respondent to refund the total amount paid by the complainant i.e., Rs.20,15,001/- along with interest @ 18% from the date of payment till the date of payment refund.
5. 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

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

- i. The complainant approached the respondent making enquiries about the project and after complete information being provided to them, sought to book a unit in the said project.
- ii. That on 04.09.2015, the complainant in the presence of officials of DGTCP/DC vide draw, was allotted unit bearing no.1307, 13th floor, in tower- 5 for a total consideration of Rs.19,28,500/-.
- iii. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer agreement dated 27.04.2016.
- 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 extended 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.

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- vi. That the 'possession' clause itself provided a 'commencement date' from which point, the respondent had delivered the possession of the apartment within 4 years thereof. It would be apposite to note that the respondent received sanction for its building plans on 12.09.2014 from the Directorate of Town and Country Planning, Haryana and the environment clearance on 22.01.2016. Therefore, the commencement date as per agreement is 22.01.2016 and 4 years from that date would mean that the respondent had to give possession of the apartment by 21.01.2020. However, due to extraneous and force majeure conditions not within the powers and control of the respondent company, the development of the said project was delayed.
- vii. That in view of the force majeure clause, it is clear that the occurrence of delay in control of it, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of th respondent for completion of the project.
- viii. That the timeline stipulated under the buyer's agreement 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

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

- ix. 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 labourers 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 aftereffects 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.
- x. That the complainant has not come with clean hands before this authority and have suppressed the true and material facts from this authority. It would be apposite to note that the complainants are mere speculative investor who have no interest in taking possession of the apartment.
- xi. 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 complete the project. The project is on-going project and the construction is going on.

- xii. 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.
- xiii. That compounding all these extraneous considerations, the ***Hon'ble Supreme Court vide order dated 04.11.2019***, imposed a blanket stay on all construction activity 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 resulted 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.

- xiv. 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.
- xv. 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. In view of the same, the pandemic is clearly a 'force majeure' event, which automatically extends the timeline for handing over of possession of the apartment.

- xvi. That as per admission of the complainant, he want to cancel the booking for them own reasons, and not on the basis of any deficiency in service, or delay construction by the respondent. The cancellation of the booking is governed by the clause 2.3 of the buyer's agreement, whereby the respondent is contractually entitled to forfeit the forfeitable amount as per terms of the agreement and affordable group housing policy. Therefore, without prejudice to the fact that the complainant would be in brazen breach of the agreement, in the event that this authority grant the relief so claimed, the respondent is not mandated to refund any monies with interest.
- xvii. That the project is an ongoing project and orders of refund at a time when the real estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. That any refund order at this stage would severally prejudice the interest of the other allottees of the project as the



diversion of funds would severally impact the project development. Thus, no order of refund may be passed by this authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.

- xviii. That the complainant cannot unilaterally cancel/withdraw from the affordable group housing project at a late stage as the same would fly in the face of numerous judicial pronouncements as well as the statutory scheme as proposed under the Act of 2016.
7. 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.
8. The application for refund was filed in the form CAO with the adjudicating officer. After taking reply and presuming the case file, the application was allowed vide order dated 05.04.2021, with a direction to the respondent "To refund the entire amount of Rs.20,15,001/-, Rs.14,94,590/- and Rs.7,17,855/- minus Rs.25,000/- from each set of complainants within a period of 90 days from the date of this order failing which the respondent would be liable to pay interest @ 9.30% per annum from the expire of 90 days period." Felling aggrieved with the same, the order was challenged by the complainants before the Haryana Real Estate Appellate Tribunal, Chandigarh and who vide order dated 09.12.2022, set aside the same with a direction to the authority for fresh



decision of the compliant in accordance with law. So, in pursuant to those direction, both the parties put in appearance before the authority. Therefore, the complaint is being deal with the authority. Now, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.05.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and was observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (2021-2022 (1) RCR (C), 357**, the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of **Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019** has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely



due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the basis of proceedings and submissions made by both the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

11. 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

12. 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.

13. 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 complainants at a later stage.
14. 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."

15. 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 delay in completion of construction of project due to outbreak of Covid-19.

16. From the bare reading of the possession clause of the flat buyer agreement, 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** it was 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. 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 complainant/allottee 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 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 complainants being investors.

17. The respondent has taken a stand that the complainant is the investor and not consumers, therefore, he is not entitled to the protection of the Act and thereby not entitled 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 consumers 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

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a statute but at the same time, 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 the promoter 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 buyer, and he has paid total price of **Rs.20,15,001/-** to the promoter towards purchase of an apartment in its project. 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;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them 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**



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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 are not entitled to protection of this Act also stands rejected.

F. III Objection regarding force majeure conditions:

19. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as delay in shortage of labour, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project. But all the pleas advanced in this regard are devoid of merit. It is observed the plea advanced cannot be taken as the complainant was never a party to said contract and thus, there was no privity of contract. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specify for which period such orders has been made operative. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the



promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the total amount paid by the complainant i.e., Rs.20,15,001/- along with interest @ 18% from the date of payment till the date of payment refund.

20. The complainant was allotted unit no. 1307 on 13th floor, in tower/block- 5, in the project "Supertech Basera" by the respondent/builder for a total consideration of Rs.19,28,500/-. A buyer's agreement was executed on 27.04.2016. The possession of the unit was to be offered with 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) and whichever is later, which comes out to be 22.01.2020. The complainant has placed an email dated 09.05.2019 on page no. 73 of the complaint wherein, surrendered his unit by some personal reasons and which led to his withdrawal from the project and seeking refund by filing of complaint.
21. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 and amended on 05.07.2019, the relevant provision is reproduced as under:

Clause 5(iii) (h) of the affordable housing policy

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender

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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 year 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

Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".

22. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the

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date of grant of environment clearance i.e., 22.01.2016 is later and hence, the same would be considered as date of commencement of project.

23. The respondent/promoter is directed to refund the paid-up amount after deduction of 5% 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 @10.75% per annum from the date surrender/withdraw of allotment i.e., 09.05.2019 till the actual realization of the amount.

H. Directions of the authority

24. 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 after deduction of 5% 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 @10.75% per annum from the date surrender/withdraw of allotment i.e., 09.05.2019 till the actual realization of the amount.




- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. Complaint stands disposed of.
26. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 08.08.2023



HARERA
GURUGRAM