

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

Complaint no. : 3064 of 2022
Date of decision : 09.10.2023

Anirudh Krishna,
Kavita Gopal Krishna and
Sumesh T Nalarajan
ADDRESS: H.no. 1106, Block G, Shree
Vardhman Mantra Flat, Ansal Escencia Road,
Sector 67, Gurgaon – 122101.

Complainants

Versus

Suposhaa Realcon Private Limited
ADDRESS: Unit no. SB/C/2L/Office/017A,
M3M Urbana, Sector 67, Gurugram 122102.

Respondent

APPEARANCE:

For Complainants: Mr. V.K. Bansal Advocate
For Respondent: Ms. Shriya Takkar Advocate

ORDER

1. This is a complaint filed by Mr. Anirudh Krishna, Ms. Kavita Gopal Krishna and Mr. Sumesh T Nalarajan(allotees) under section 31,35,36,37 and 38 of The Real Estate (Regulation



and Development) Act, 2016 against Suposhaa Realcon Pvt. Ltd.(promoter)

2. As per complainants, in October, 2021, respondent advertised one of its real estate projects in the name and style of '*Smartworld Orchard*', located at Sector-61, Gurugram. On the depictions, delineations and assurances by the respondent, they(complainants) applied for the booking of an independent floor for total consideration of Rs.1.2 Crore (appx.) and paid an advance booking amount of Rs.2,00,000/- .
3. They(complainants) asked the respondent and its authorised agents including '*M/s Square Yards*' (a property consultancy agency registered vide certificate no. 141-A of 2017), for the acknowledgment receipts, application form and to comply with other required documentary formalities but respondent kept on seeking time ^{on} for one or the other reason.
4. That on demand raised by respondent, they(complainants) paid an amount of Rs. 10,24,750/- on 15.11.2021 and an amount of Rs.6,12,375/- on 17.11.2021 through cheques. After receiving ^{total} ~~total~~ amount of Rs.18,37,125/- i.e. around 15% of the total sale consideration of the said unit, a unilateral application form was provided to the them(complainants), which they refused to sign, as it incorporates one-sided clauses, which were not at all

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acceptable to them (complainants). The respondent strictly refused to make any alteration in the Application form and threatened them (complainants) to forfeit the booking amount and accordingly, they (complainants) were compelled to sign the said Application form under a threat.

5. They (complainants) made ² regular and repeated visits to the Respondent and requested for payment acknowledgment slip, a copy of approved application form and booking confirmation documents, consequently a confirmation email dated 30.12.2021 and 21.01.2022 was sent to them (complainants) with an erroneous acknowledgment of Rs.16,37,125/- only, whereas they had paid an advance amount of Rs.18,37,125/- against the said booking. After time and again requests, one of the executive of respondent telephonically allotted a Flat bearing No. K 24 A (hereinafter referred as '*the flat*') to complainants and also assured that an allotment letter alongwith a Builder Buyer Agreement will be sent to them within a week. But the assurances remained unadhered.
6. On 23.04.2022, they (complainants) again visited respondent and ^{its} their authorised agent M/s Square Yards, where they got to know that the said allotted flat falls under the frozen ratio as per '*Deen Dayal Jan Awas Yojna - Affordable Plotted Housing Policy 2016*', thus they cannot proceed towards the



documentation unless and until the same is released by the concerned Govt. department. Complainants were shocked and felt aggrieved & cheated when they got to know about the above fact, as the respondent assured their booking in unfrozen ratio at the time of booking and unlawfully extorted a sum of Rs.18,37,125/- from them(complainants) on the basis of fake and fallacious assurances. After which, complainants requested for cancellation of unit through email on 23.04.2022.

7. As per the law enshrined under section 3 of the RERA, 2016, the respondent was obliged not to advertise, market, book, sell, offer for sale or invite general public without getting the project registered with the Real Estate Regulatory Authority. As per section 13 of the Act of 2016, respondent cannot accept more than 10% of the cost of unit as an application fees. Respondent was obliged to refund the total amount received from the complainants within a reasonable time from the date of request of their cancellation, but respondent has not refunded the said amount. Respondent has also been unfair by allotting a frozen flat to the Complainant despite making an assurance of an unfrozen flat, which is termed as cheating under the law enshrined under the Indian Penal Code. A separate complaint has been filed against the Respondent, its authorised agents and authorised executives,

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who were indulged in the conspiracy of committing said and other serious offences against the Complainant.

8. That the Respondent has committed a number of defaults by not adhering to the law and rules enshrined under RERA, 2016 and Deen Dayal Jan Awas Yojna - Affordable Plotted Housing Policy 2016, thus is liable for the cancellation/revocation of project.

Citing all this, complainants have sought following reliefs:

- a. ^{to} Direct respondent to compensate complainants by refunding an amount of Rs.18,37,125/- along with interest @ 18% p.a.
- b. ^{to} Direct respondent to compensate the complainants by making a payment of Rs. 2,00,000/- against the harassment and persecution to the complainants.
- c. ^{to} Direct respondent to compensate the complainants against the litigation cost and expenses incurred by the complainants for this litigation.

Respondent contested the complaint by filling written reply. It is averred by the respondent :-

9. That the complainants have filed present complaint under Rule-29 of the said Rules and is seeking relief of refund and interest under Section 18 of the Act of 2016. Complaint, if any, as per the reliefs claimed is required to be filed before the Authority under Rule-28 of the said Rules and not before Hon'ble Adjudicating Officer. The Adjudicating Officer can

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only decide the issue of compensation subject to an enquiry made by the Authority under Rule 28. After amendment in HARERA rules w.e.f. 12.09.2019 and after the judgement by Apex Court in the case titled as M/s. Newtech Developers and Promoters Pvt. Ltd. vs. State of U.P. & Ors. (Civil Appeal Nos. 6745-6749 of 2021) Hon'ble Adjudicating Officer does not have the jurisdiction to entertain present complaint as the same pertains to refund of the amount deposited. The power of refund lies with the Hon'ble Authority and not the Hon'ble Adjudicating Officer. Respondent filed an application on 13.08.2022 for dismissal of this complaint on above mentioned grounds.

10. That Independent Floor Residencies are being developed on 327 plots in the Affordable Plotted Colony under Deen Dayal Jan Awas Yojna in the name and style of "Smartworld Orchard" (Project) in revenue estate of village Ullawas & Behrampur, Sector-61, District Gurugram. ^L ~~That~~ ^T the project is registered vide Registration No.

RC/REP/HARERA/GGM/506/238/2021/74 dated 03.11.2021 with the Haryana Real Estate Regulatory Authority under the RERA Act.

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11. That complainants vide email dated 23.04.2022 requested the respondent to cancel the expression of interest and to refund the amount paid by the complainants. Respondent being a customer-oriented company acceded to the request of the complainants and initiated the process of cancellation of EOI which was processed on 07.07.2022 and the same was intimated through email also. Respondent also refunded the amount paid by the complainants vide RTGS no. KKBKR52022070700756429 in the name of complainants no 2 & 3 on 07.07.2022. Respondent deducted Rs.30,000/- towards amazon voucher gifted as an incentive as per email dated 23.03.2022. The present complaint is infructuous as the request of the complainants have been acceded to and the amount paid by the complainants i.e.Rs. 18, 07,125/- has been duly refunded by the respondent. Complainants have suppressed many material facts, which are extremely relevant in order for a proper adjudication of the present dispute.
12. This complaint is baseless, vexatious and is not tenable in the eyes of law and has been filed out of sheer greed, therefore the complaint deserves to be dismissed. Complainants have

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also failed to place on record any proof of the alleged damages/losses caused to them. Hence, this complaint must be dismissed.

I heard learned counsels representing both of the parties and went through record on file.

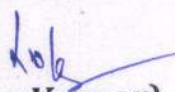
13. As mentioned above, complainants have prayed for refund of amount of Rs.18,37,125/- along with interest @18.5% p.a. According to the judgement by the Apex Court of India in case titled viz. Newtech Promoters and Developers Pvt. Ltd. vs State of UP & ors. Civil Appeal No(s). 6745-6749 of 2021, jurisdiction to grant relief of refund is vested with the authority. Even otherwise, as per respondent, amounts paid by complainants have already been refunded to them. No reason to direct respondent to refund said amount again. Request in this regard is rejected.
14. So far as claim of complainants for compensation due to allotment of unit which was frozen under the provisions of Deen Dayal Jan Awas Yojna - Affordable Plotted Housing Policy 2016, is concerned, true. Said policy provided for freezing of 50% of saleable area. The plea of complainants that unit provided to them was a frozen unit, as per said policy, is not disputed by the respondent. It is contended by the learned counsel for the complainants, that his clients were forced to apply for refund of their amount, after finding that unit allotted to them, could not have been sold, being a frozen unit.



15. As per complainants, after receiving an amount of Rs.18,37,125/-, they were told by an executive of respondent that same (complainants) have been allotted a flat no. K 24 A. This fact also remained undisputed.
16. Section 12 of Act of 2016, tells about the obligations of promoter. According to it, "where a person makes an advance or a deposit on the basis of information, contained in notice/ advertisement or prospectus or on the basis of any model apartment/ plot/ building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter, in the manner as provided under this Act. Proviso added to this section also mentions about, the compensation apart from refund of amount, along with interest.
17. Considering undisputed facts, as mentioned above, complainants are entitled for compensation, from respondent, the latter, having ^{seen} allotted a unit which could not have been sold, being a frozen unit under policy of 2016.
18. Section 72 of the Act of 2016 prescribes the factors, which are to be taken into account by the Adjudicating Officer, while deciding quantum of the compensation. As stated earlier, the complainants were compelled to apply for their amount refunded, after knowing that unit allotted to them could not have been sold, under the policy. Considering devaluation of



- rupee and constantly ^{rising} ~~raising~~ prices of plots/ houses in India, the complainants are awarded a sum of Rs.3,00,000/- as compensation, to be paid by the respondent.
19. Complainants have prayed for a sum of Rs.2,00,000/- as compensation for harassment and persecution. In the light of facts mentioned above, apparently, the complainants suffered mental agony and harassment. Same (complainants) are awarded a sum of Rs.1,00,000/ on this account, to be paid by the respondent.
20. Complainants have prayed for litigation cost etc. Although, no certificate of fee of advocate is filled by the complainants, it is apparent, that same were represented by an advocate during trial of this case. Complainants are awarded a sum of Rs.50,000/- as cost of litigation to be paid by the respondent.
21. Complaint is thus allowed. Respondent is directed to pay aforesaid amounts of compensation to complainants within 30 days of this order, otherwise same will be liable to pay interest @10.5% p.a. till realisation of amount.
22. File be consigned to records.


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