

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

Complaint No. : 338 of 2018
First date of hearing : 24.07.2018
Date of Decision : 28.02.2019

Ms. Sweta Jhunjunwala,
CIII-401, Indraprasta complex,
VIP Road, Kaikhali, Kolkata-70052

...Complainant

Versus

M/s Revital Reality Pvt Ltd. c/o Supertech
limited sector 58, Noida.

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri L.N. Taparia

Authorised representative for
complainant

Shri Rishab Gupta

Advocate for the respondent

ORDER

1. A complaint dated 28.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Ms. Sweta Jhunjunwala, against the promoter M/s Revital Reality Pvt





Ltd., on account of violation of section which is the obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since the allotment letter dated 26.09.2016 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Supertech Basera sector 79 B , Gurugram
2.	Unit No.	1606, tower-6,
3.	Registered /unregistered	Registered (108 of 2017)
4.	Revised date of completion as per registration certificate	31.01.2020
5.	Nature of project	Group housing complex
6.	Date of Allotment	26.9.2016
7.	Total Consideration	Rs. 7,18,800/- 19,95,998/-
8.	Total amount paid by the complainant	Rs. 4,99,000/- 7,48,800/-
9.	Payment plan	Construction Linked plan
10.	Date of delivery of possession.	4 year from environment

Corrected vide order dated 24/04/2019





	Clause 5 (ii)(b) of affordable housing policy	clearance i.e. 22.01.2020
11.	Environmental clearance	22.01.2016
12.	Delay in handing over possession	premature

3. As per the details provided above, which have been checked as per record of the case file. According to the allotment letter dated 02.11.2016 the complainant has allotted unit no. 1606, tower-6. The builder buyer agreement is not executed till date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 24.07.2018. The case came up for hearing on 24.07.2018, 6.09.2018 and 11.10.2018, 15.11.2018, 16.11.2018 and 28.02.2019. The reply has been filed on behalf of the respondent on 16.08.2018.



Facts of the case

5. The respondent builder is undertaking a project "basera" in sector 79, 79B at Gurugram under the affordable policy 2013 of Haryana. There has been violation of the affordable housing policy 2013 notified by the government of Haryana

by the respondent because without obtaining sanction of plan. The respondent builder was not supposed to make allotment of flats. The respondent builder has obtained registration under memo no. HARERA(Reg.)318/2017/739 dated 24.08.2017, stipulates the clause (iv) which require the respondent builder to enter into an agreement for sale with the allottees as prescribe in the act and rules. The respondent builder has failed and neglected to enter into such agreement thereby violating the RERA as well as the conditions of the registration under the right from the initial stage. The complainant by various letters, electronic mails and notices issued to the respondent has been requiring rescheduling the payment programme by ensuring that the possession of flat allotted to the complainant, is delivered to the payment of last instalment and to execute the agreement for the sale of the subject flat in the format specified by HARERA rules 2017. Majority of the other flat buyer have paid almost full amount of the flat. The respondent builder is not responding to the repeated communication of the complainant in spite of regular follow ups. The respondent has been threatening to cancel allotment of the subject flat and forfeit the entire amount paid by the complainant. In the case of the default of





the applicant to deposit the instalment amount within time, the colonise may deduct only Rs. 25,000/- and refund the balance amount to the applicant. The complainant has reported the matter to RERA authorities by the letter of complainant against the erring builder. The RERA authorities have advised the complainant to file the complaint in the prescribe format. Hence, this complaint arises.

Issues raised by the Complainant

- I. Whether the respondent was entitled to invite application for the allotment and accept the amount for the costs of flats in violation of the affordable housing policy 2013.
- II. Whether the respondent can whimsically set the terms of the agreement with the flat buyer in contravention of the affordable housing policy 2013 as well as real estate regulation act.
- III. Whether the respondent can demand the amount for the cost of the flat from the compliant without making any progress in the construction work and particularly the designated tower 6 in which the flat allotted to the complaint.



IV. Whether the respondent can unilaterally cancel the allotment of the flat to the complaint and forfeit the entire amount paid by the complainant to the respondent.

Relief Sought

- I. That direct the respondent to reschedule the payment programme by ensuring that the possession of the flat allotted to the complainant.
- II. That direct the respondent to execute the agreement for sale of the flat.
- III. That direct the respondent not to charge any interest or any penal interest from the complainant for the amount claimed outstanding by the respondent,
- IV. Direct the respondent to deliver the possession of the subject flat to the complaint within time bound.
- V. Injunction restraining the respondent from giving effect to the demand cum cancellation notice of the respondent dated 23.12.2017.





Reply

6. That the present complainant suffers with the defect of Non-joinder of the necessary & proper parties as the present complaint is filed against Revital Reality Pvt. Ltd which an associate company of the supertech is limited who is developing the project in question with all development rights. Hence the present complaint is liable to be dismissed.
7. That the respondent pertains that the complaint to the jurisdiction of this Hon'ble Authority which are denied so far as it is relates to the relief sought in the complaint,
8. That the interpretation of the provision of the affordable housing policy 2013 which has been intentionally misinterpreted to mislead the Hon'ble HARERA authority and deflect the attention from complaint's financial condition and its inability to pay the instalment amount as stipulated under the affordable housing policy,2013.
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10. That the demand unilaterally reschedules the payment programme is arbitrary and illegal in nature
11. That the project is circumventing and the wrong and therefore vehemently denied. further the unit booked by the complainant was under the project name affordable group housing project BASERA which has been registered under RERA Act bearing RERA registration no .318 of 2017. That the complainant failed to produce any receipt against the alleged payment amounting to Rs, 7,48,800/- and the receipts of the same needs to be produced before Hon'ble authority.
12. That the complaint is itself in default in making payment of the instalments in the respect of the unit allotted despite several reminders the complainant was duty bound to make the payment on her own without waiting for any such demand or reminder.





Determination of issues

13. In respect to **first issue** raised by the complainant as per the clause 5(g) of affordable housing policy, 2013 only such application shall be considered for draw of lots which are completed and fulfil the criteria laid in the policy. However, the complainant has failed to specifically state as to which provision of the said policy has been violated
14. In respect to **second and third issue** raised by the complainant as per the view of the authority the complainant has failed to specify that which terms of the agreement are in contravention of affordable housing policy 2013 as well as Real Estate (Regulation and Development) Act and no document has been submitted regarding the progress of construction.
15. In respect to **fourth issue** raised by the complainant as per the clause 5(h)(i) of the affordable housing policy, 2013 if the applicant failed to deposit the instalment within the time period as prescribed in the allotment letter, the allotment may be cancelled then an amount Rs. 25000/- may be deducted by the coloniser and balance amount shall be refunded to the applicant.



16. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

"34 (f) Function of Authority -

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."

17. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

18. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

19. The case of the complainant is that he had booked a unit no.1606, tower-VI in project " SUPERETECH BASERA" in sector 79-B but no BBA to this effect was executed inter-se the parties. As per allotment letter dated 26.09.2016 the above mentioned unit was booked by the complainant. As



Clause 5(ii)(b) of Affordable Housing Policy, the respondent is duty bound to deliver the possession to the complainant by 22.01.2020. Till date the complainant has paid an amount of Rs. ~~4,99,000/-~~ ^{7,48,800/-}. Vide letter dated 23.12.2017, the respondent had sent a demand-cum-cancellation notice to the complainant. Now, the complainant submits that he does not want to retain the booked unit and is praying for refund of the amount deposited with the respondent along with interest.

Decision and direction of authority

20. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondent:

- i. The respondent is liable to refund the amount deposited by the complainant after deducting Rs.25,000/- within a period of 90 days from the date of issuance of this order. However, no interest is payable to the complainant under the policy.

21. The order is pronounced.

*Corrected vide order
dated 24/04/2019*





HARERA
GURUGRAM

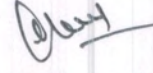
Complaint No. 338 of 2018

22. Case file be consigned to the registry.


(Samir Kumar)

Member

Dated: 28.02.2019



(Subhash Chander Kush)

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Corrected judgement uploaded on 10.02.2020



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Corrected vide order dated 24/04/2019



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Determination of issues

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19. The case of the complainant is that he had booked a unit no.1606, tower-VI in project " SUPERETECH BASERA" in sector 79-B but no BBA to this effect was executed inter-se the parties. As per allotment letter dated 26.09.2016 the above mentioned unit was booked by the complainant. As



Clause 5(ii)(b) of Affordable Housing Policy, the respondent is duty bound to deliver the possession to the complainant by 22.01.2020. Till date the complainant has paid an amount of Rs.4,99,000/-. Vide letter dated 23.12.2017, the respondent had sent a demand-cum-cancellation notice to the complainant. Now, the complainant submits that he does not want to retain the booked unit and is praying for refund of the amount deposited with the respondent along with interest.

Decision and direction of authority

20. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondent:

- i. The respondent is liable to refund the amount deposited by the complainant after deducting Rs.25,000/- within a period of 90 days from the date of issuance of this order. However, no interest is payable to the complainant under the policy.

21. The order is pronounced.



22. Case file be consigned to the registry.


(Samir Kumar)

Member

Dated: 28.02.2019


(Subhash Chander Kush)

Member

Corrected Judgement Uploaded on 27.04.2019



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 28.02.2019
Complaint No.	338/2018 case titled as Sweta Junjhunwala V/S Revital Reality Pvt. Ltd.
Complainant	Sweta Junjhunwala
Represented through	Mr.L.N.Taparia, authorized representative
Respondent	Revital Reality Pvt. Ltd.
Respondent Represented through	Mr.Rishab Gupta, advocate
Last date of hearing	16.1.2019
Proceeding Recorded by	H.R.Mehta and S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

The case of the complainant is that he had booked a unit No.1606, Tower-VI in project " SUPERETECH BASERA" in sector 79-B but no BBA to this effect was executed inter-se the parties. As per allotment letter dated 26.09.2016 the above mentioned unit was booked by the complainant. As Clause 5(ii)(b) of Affordable Housing Policy, the respondent is duty bound to deliver the possession to the complainant by 22.01.2020. Till date the complainant has paid an amount of Rs.4,99,000/-. Vide letter dated

23.12.2017, the respondent had sent a demand-cum-cancellation notice to the complainant.

Now, the complainant submits that he does not want to retain the booked unit and is praying for refund of the amount deposited with the respondent alongwith interest.

Considering all the facts and circumstances of the matter and as per provisions of Affordable Housing Policy, the respondent is liable to refund the amount deposited by the complainant after deducting Rs.25,000/- within a period of 90 days from the date of issuance of this order. However, no interest is payable to the complainant under the Policy.

Accordingly, complaint stands disposed of. Detailed order follows. File be consigned to the Registry.

Samir Kumar
(Member)
28.02.2019

Subhash Chander Kush
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10. That the demand unilaterally reschedules the payment programme is arbitrary and illegal in nature
11. That the project is circumventing and the wrong and therefore vehemently denied. further the unit booked by the complainant was under the project name affordable group housing project BASERA which has been registered under RERA Act bearing RERA registration no .318 of 2017. That the complainant failed to produce any receipt against the alleged payment amounting to Rs, 7,48,800/- and the receipts of the same needs to be produced before Hon'ble authority.
12. That the complaint is itself in default in making payment of the instalments in the respect of the unit allotted despite several reminders the complainant was duty bound to make the payment on her own without waiting for any such demand or reminder.



Determination of issues

13. In respect to **first issue** raised by the complainant as per the clause 5(g) of affordable housing policy, 2013 only such application shall be considered for draw of lots which are completed and fulfil the criteria laid in the policy. However, the complainant has failed to specifically state as to which provision of the said policy has been violated
14. In respect to **second and third issue** raised by the complainant as per the view of the authority the complainant has failed to specify that which terms of the agreement are in contravention of affordable housing policy 2013 as well as Real Estate (Regulation and Development) Act and no document has been submitted regarding the progress of construction.
15. In respect to **fourth issue** raised by the complainant as per the clause 5(h)(i) of the affordable housing policy, 2013 if the applicant failed to deposit the instalment within the time period as prescribed in the allotment letter, the allotment may be cancelled then an amount Rs. 25000/- may be deducted by the coloniser and balance amount shall be refunded to the applicant.



16. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

“34 (f) Function of Authority –

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.”

17. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.
18. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
19. The case of the complainant is that he had booked a unit no.1606, tower-VI in project “ SUPERETECH BASERA” in sector 79-B but no BBA to this effect was executed inter-se the parties. As per allotment letter dated 26.09.2016 the above mentioned unit was booked by the complainant. As



Clause 5(ii)(b) of Affordable Housing Policy, the respondent is duty bound to deliver the possession to the complainant by 22.01.2020. Till date the complainant has paid an amount of Rs.4,99,000/-. Vide letter dated 23.12.2017, the respondent had sent a demand-cum-cancellation notice to the complainant. Now, the complainant submits that he does not want to retain the booked unit and is praying for refund of the amount deposited with the respondent along with interest.

Decision and direction of authority

20. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondent:

- i. The respondent is liable to refund the amount deposited by the complainant after deducting Rs.25,000/- within a period of 90 days from the date of issuance of this order. However, no interest is payable to the complainant under the policy.

21. The order is pronounced.



22. Case file be consigned to the registry.

(Samir Kumar)

Member

Dated: 28.02.2019

(Subhash Chander Kush)

Member

Judgement uploaded on 11.03.2019



HARERA
GURUGRAM

