

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

Complaint No.: 133 of 2018
First date of hearing: 15.05.2018
Date of Decision: 11.07.2018

1.	Anoop Rawat R/o, C-176, Siddarth Kunj Apartment, Plot no. 17, Sector -7, Dwarka-110075	...Complainant
Versus		
1.	M/s Supertech Ltd. Regd. Office B-28, 29 Sector 58, Noida-201301.	...Respondents
2.	M/s Investors Clinic Infratech Pvt. Ltd. Regd. Office	

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Umesh Chauhan
Ms. Oshin

Advocate for the complainant
Advocate for the respondent no. 2

ORDER

1. Complaint dated 05.04.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Anoop Rawat against the promoter M/s Supertech Ltd. on account of



violation of Clause 26 of the allotment agreement executed on 04.11.2016 for unit no. 2301, tower-B, 23rd floor in the project “Officers Enclave” as the project is scrapped.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	Officers Enclave, Sector 2, Gurugram
2.	Type of real estate project	Residential plotted colony
3.	Unit No.	2301, tower-B, 23 rd floor
4.	Registered/Un-registered	Registered (258 of 2017)
5.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 25,000/-
6.	Total consideration amount as per agreement dated 04.11.2016	Rs.33,88,400/-
7.	Total amount paid by the complainant	Rs. 7,08,146/-
8.	Date of delivery of possession.	Clause 26 i.e. 31.07.2020
9.	Penalty clause as per agreement dated 04.11.2016	Clause 26 i.e. Rs.5/- per square ft of super area

3. The details have been checked and found on record as per the case file. An allotment agreement dated 04.11.2016 is available on record for 2301, tower-B, 23rd floor according to which the possession of the aforesaid unit was to be delivered by 31.07.2020. The promoter has failed to fulfil its obligations as the construction has not even started on the project site, and eventually got scrapped. Therefore, the promoter has not fulfilled his committed liability as on date.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent no. 1 appeared on 15.05.2018. The case came up for hearing on 15.05.2018, 19.06.2018 and 11.07.2018. The reply has been filed on behalf of the respondent which has found to be vague and evasive.
5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The counsel for the complainant submitted that the said project has been shelved. The counsel for the complainant further submitted that the complainant does not want to continue with the project and wants refund along with interest.

FACTS OF THE COMPLAINT

6. Briefly stated, the facts of the case as culled out from the complaint are that on 15.01.2016, the respondent launched a project "Officer's Enclave" in sector 2, Sohna Road in daily newspaper with special housing scheme for serving/retired government officials. The complainant after seeing the advertisement visited the site and contacted to M/s Investors Clinic who is the service provider of the said project and also the respondent no. 2 in the said complaint.



7. On 12.02.2016, the complainant paid an amount of Rs 15,000/- to respondent no. 2 as the booking amount for an apartment in the upcoming project of M/s Supertech limited.
8. On 05.02.2016, the complainant submitted an application form to respondent no. 1 for booking an apartment and paid booking amount of Rs 25,000/- by cheque no. 3774226 dated 13.02.2016.
9. The complainant paid all the demand raised by the respondent against the said booking and till 08.09.2016 the complainant paid a total amount of Rs 7,08,176/- to the respondent before signing the allotment letter.
10. The respondent executed the allotment agreement on 04.11.2016 and through this letter the complainant was allotted an apartment bearing no. R058B4002301/Flat #2301, Tower B4, 23rd floor, measuring 985 sq. ft, 2BHK in the above said project.
11. After signing the above said allotment agreement, the complainant did not receive any update regarding the progress of the project so the complainant sent email dated 02.06.2017 for knowing the status of the project and on 20.06.2017 for refund of his booking amount because the complainant's were told that the project has been shelved.



12. The complainant was clearly told by respondent no. 1 that they won't be refunded their deposited amount which is clearly a case of unfair trade practice adopted by the respondents.

13. Due to the above stated facts the complainant prays for refund of the amount with interest from the respondent.

RELIEF SOUGHT:

I. Direct the respondent to pay to the complainant an amount of Rs 7,08,146/- with interest @ 18% p.a. from the date of deposit till the date of actual realization.

II. Any other relief as the authority deems fit and proper.

14. The counsel for the complainant reserves his right to seek compensation from the promoter for which he shall make a separate application before the adjudicating officer, if required.

15. As per the facts stated above, it is admitted that as the project is located in sector 2, Sohna Road, Gurugram, the authority has complete territorial jurisdiction to entertain the present complaint.

16. The respondent failed to file the reply despite service. Hence, the present complaint is decided ex parte on the basis of the facts stated by the complainant.



DETERMINATION OF RELIEF SOUGHT BY COMPLAINANT

- I. In regard to the only relief sought by the complainant the promoter u/s 18 of RERA Act, 2016 is liable to refund the entire amount of Rs 7,08,146/- with prescribed rate of interest from the due date of possession till the handing over of possession. Section 18 is reproduced below:

18. Return of amount and compensation

..... Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

- II. In regard to the second relief, the authority is the appropriate forum to decide any other relief as it deems fit and proper.

As per clause 32 of the allotment agreement

“ 32.. That in case a particular apartment/floor is omitted due to change in the plan or the developer is unable to hand over the same to the allottee for any reason beyond its control/force majeure events, the developer shall provide alternate floor/apartment of the same type and in the event of non-acceptability by the allottees and/or non-availability of alternate floor/apartment within a specified time period, the developer shall be responsible for refund only the actual amount received from the allottees

17. Accordingly, the builder failed to fulfil his obligation of handing over possession by scrapping the said project. As far as the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:



18. "...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

19. As the possession of the flat was to be delivered by July 2020 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

20. 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.”

21. It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

22. As per section 18(1), the promoter is liable to refund the amount with interest to the allottee if he fails to complete or hand over possession as per the terms of the agreement for sale. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as



provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

23. The complainant reserves his right to seek compensation from the promoter for he shall make a separate application to the adjudicating officer, if required.
24. Thus, the Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent no. 1 to refund the amount of Rs 7,08,176/- along with the interest@ 10.45% p.a. from the date of receipt by the respondent i.e. 11.07.2018.
25. 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.
26. The order is pronounced.
27. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)

Chairman

(11.07.2018)

Haryana Real Estate Regulatory Authority, Gurugram



HARERA
GURUGRAM





HARERA
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HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा


PROCEEDINGS OF THE DAY


Day and Date	Wednesday and 11.7.2018
Complaint No.	133/2018 case titled as Mr. Anoop Rawat versus M/s Supertech Limited and others
Complainant	Mr. Anoop Rawat
Represented through	Shri Umesh Chauhan Advocate for the complainant.
Respondent	M/s Supertech Limited and others
Respondent Represented through	Ms. Oshin Advocate for the respondent.

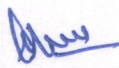
Proceedings

The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

Arguments advanced by the learned counsel for the parties have been heard. The learned counsel for the complainant has submitted that the complainant did not want to continue with the project and wants refund alongwith interest. The learned counsel for the respondent is directed to handover the Cheque of the demanded amount to the complainant upto 16.7.2018. The complaint is disposed of accordingly. Detail order will follow. File be consigned to the Registry.


Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
11.7.2018


Subhash Chander Kush
(Member)