

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 18.09.2018
Complaint No.	411/2018 Case titled as Mr. Tara Chand Sain V/s M/s Supertech Limited & Another
Complainant	Mr. Tara Chand Sain
Represented through	Complainant in person.
Respondent	M/s Supertech Limited & Another
Respondent Represented through	Ms. Oshin, Advocate for the respondent.
Last date of hearing	7.8.2018
Proceeding Recorded by	

Proceedings

As informed by the counsel for the respondent, the project is registered. Accordingly, necessary correction deemed to have been made in the earlier proceedings.

The complainant himself appeared and made a request that he wants to surrender the flat allotted to him by the respondent, as per the provisions of the affordable housing scheme 2013.

Keeping in view the provisions contained in para No.5 (ii) (h) of Affordable Housing Policy, 2013, in case of surrender of the flat by any

successful applicant, an amount of Rs.25,000/- will be deducted by the colonizer.

Accordingly, the respondent is directed to refund the amount deposited by the complainant by deducting Rs.25,000/- within 90 days from today. Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
18.09.2018

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

Complaint No. : 411 of 2018

Date of first hearing : 07.08.2018

Date of Decision : 18.09.2018

Tara Chand Saini, R/o 23-D, block-4,
Shivalik Vihar, Nayagaon, District Mohali

...Complainant

Versus

M/s Supertech Ltd, office at: B 28-29,
sector- 58, Noida.

...Respondents

M/s Revital Reality Pvt Ltd, 1114, Hemkunt
Chambers, 89, Nehru Place, New Delhi

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Tara Chand Saini
Ms. Oshin

Complainant in person
Advocate for the respondent



ORDER

1. A complaint dated 08.06.2018 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 Tara Chand Saini, against the promoter M/s Supertech Ltd and M/s Revital

reality pvt ltd on account of violation of clause 6 of the allotment letter executed on 19.09.2015 for unit no. 1003, tower 15 in the project "Supertech Basera" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

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

1.	Name and location of the project	"Supertech Basera" Sector- 79, Gurugram
2.	Area of the project	10.144 Acres
3.	Registered/not registered	Registered (108 of 2017)
4.	DTCP license	13 of 2012
5.	Date of booking	04.04.2015
6.	Booking amount	Rs 96,425/-
7.	Date of apartment buyer agreement	Not Executed
8.	Unit no.	1003, tower-15
9.	Area of unit	546 sq. ft.
10.	Total consideration	Rs. 19,95,998 /-
11.	Amount paid	Rs 14,63,249
12.	Amount Due	Rs 5,32,749
13.	Total amount paid by the complainant	Rs 46,81,567 /-
14.	Date of delivery of possession.	January 2020 4 years from the date of commencement of ate of construction
15.	Delay of number of months/ years	(Premature)



FACTS OF THE CASE

3. That the complainant was allotted a unit no.1003, tower 15, in "Supertech Basera", Sector 79 Gurugram on 19.09.2015, through a draw of lot, under the Haryana government affordable policy, 2013. The complainant made all the payments up to 18.09.2017 under the payment scheme of the policy.
4. That the respondents sent a duplicate copy of agreement for sale in 2016 by post to an incorrect home address of the complainant before RERA Haryana came into force. The respondents noted down incorrect home address as well as email of the complainant negligently. The complainant was contacted on via phone by the respondents, then the home address and email was got corrected and the proposed builder buyer agreement was collected from the Gurgaon branch by the complainant personally on 25.04.2016.
5. That after reading and examination of proposed builder buyer agreement the complainant sent emails dated 13.5.16, 6.10.16, 19.2.17 and 5.5.17 to amend and modify the proposed agreement. The complainant also wrote a letter dated



20.02.2017 to amend two clauses therein and execution of agreement but no response was received. Resultantly, the complainant personally handed over the duplicate copy of agreement after duly signed on each page along with covering letter dated 18.03.2017, complainant added two conditions with his own handwriting on builder buyer agreement. The respondents stated in reply to query made by complainant through email that builder buyer agreement will be executed under RERA which was coming into existence shortly.

6. That the complainant sent a reminder vide letter dated 07.09.2017 to execute the builder buyer agreement. The same has not been duly signed by the respondents and was not returned to the complainant till now even making several requests by e-mail as well as in writing. Status of proposed unilateral BBA is pending with respondents.
7. In the absence of any agreement which is only unilateral, the complainant sent email as well as a hard copy, dated 09.04.2018 to refund the deposited amount by the complainant after deduction of Rs.25000/- in accordance with the terms and conditions as laid down by the respondents in clause 5(iv) of the allotment letter, also under Haryana



government housing affordable policy, 2013, clause 5(iii), as reproduced.

8. The complainant received outstanding statement received outstanding statement demand letter dated 01.05.2018, and notice letter dated 17.05.2018, from AVS Legal, New Delhi, for depositing the outstanding payment with 15% interest of delay period within fifteen days.
9. The complainant visited three times to the site of construction from January, 2017 to March, 2018 but found no construction work in progress except the foundation of the tower 15. It is pertinent that till now the total period of two and half year only foundation has been laid down and further there is no construction work at sight.

ISSUES RAISED

10. Whether the developer/respondents are not violating the terms and condition laid down by them in their application form & Haryana government affordable Housing Policy, 2013 for non-performance of proposed B.B.A?
11. Whether in the absence of or a proposed unilateral B.B.A. duly signed by the complainant does not justify him for refund of money deposited by him?



12. Whether an agreement for sale under RERA, Haryana on coming into its existence was not to be executed?
13. Whether there is going any work of construction of tower 15 in Supertech Basera for the last one and half year?

RELIEF SOUGHT

14. The Respondents are responsible and defaulter under the above scheme/policy. The complainant has now under these circumstances, requested to the respondents to refund of the amount through e-mail as well as through hard copy by Speed Post-dated 09.04.2018 within in two months which is not refunded till now. The total amount deposited by the complainant is 1463249.98 which is to be refunded by the respondents.
15. It is, therefore, prayed that directions be issued to the respondents to refund the above amount as mentioned in para 5 above immediately in accordance with the instructions as laid down in the affordable housing scheme/policy, 2013 of Haryana government which were also prescribed by the respondents at the time of advertisement/booking in their Brochure (Terms and conditions as laid down at the end of the application form by the respondents) and not to lay down any condition in refunding the amount.



The respondent filed their written reply in response to the complaint taking inter alia the following contentions

REPLY TO FACTS

16. At the outset each and every averment made in alleged fact mentioned in the complaint against the respondents are denied by the respondents save and except those which are specifically admitted hereinafter.
17. It is humbly submitted that the Hon'ble Authority has no jurisdiction to adjudicate the matter because the complainant is not able to disclose a cause of action showing violation of any of the provisions of the RERA Act, 2016.
18. The complaint is also not maintainable because the cause of action that is being pleaded in the complaint is of the pre-RERA period and the penalties prescribed under the RERA Act are not applicable retrospectively. The RERA Act is applicable prospectively. Any act or statue cannot be applied retrospectively if the status itself does not specifically prescribe for its retrospective application.
19. It is stated that the complainant before the RERA has filed the complaint in the matter where the complainant has been allotted his respective unit subject to the standard terms and conditions being agreed between the parties to the RERA act



coming into force and therefore the RERA should not have entertained the complaint filed by the complainant as the RERA act does not have its retrospective effect.

20. The alleged cause of action/violations does not constitute a contravention of the RERA Act 2016 and the rules and regulation made thereunder.
21. As per clause 6 of the affordable Group Housing Scheme, 2013 the possession of the allotted apartment is to be given within 4 year of the date of commencement of the project i.e. by January 2020. Hence the complaint is not maintainable as there is no violation of any of the provisions of RERA Act, 2016.
22. The date of delivery of the apartment in January 2020 as per the Affordable Group housing Scheme, 2013, hence, the complainant has no cause of action to seek any remedy from this Hon'ble Authority. It is also apposite that the time stipulated in the Registration Certificate (RC) issued by the HRERA under section 3 and 4 of the act has not yet expired.
23. Since the complaint is not maintainable hence, same may kindly be dismissed by this Hon'ble Authority.
24. There is an arbitration clause no. 23 of allotment letter for amicable settlement in the agreed standard terms & conditions of the allotment letter. Therefore, the complainant



must invoke the arbitration clause after trying to amicably settle the dispute at the first instances.

25. However the authority is of the view that as decided in the below stated cases, the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer-:

- The amendment of Sec. 8 of the Arbitration and conciliation act does not have the effect of nullifying the ratio of catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the consumer protection act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.



- Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors.**, Consumer case no. 701 of 2015, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.

26. **Determination of issues**

- The respondent has violated the terms and conditions laid down in their application form and Haryana government affordable housing policy, 2013 for non-performance of proposed builder buyer agreement.
- The complainant is entitled to surrender the booking and get the amount back after deducting Rs 25,000 as per clause 5(ii)(h) of the policy.
- The agreement was to be executed by the respondent, which he failed to do so. Coming into existence of RERA, Haryana does not exempt the respondent from executing the builder buyer agreement.

27. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.




28. Keeping in view the provisions contained in clause 5(ii)(h) of the affordable housing policy 2013, in case of surrender of the flat by any successful applicant, an amount of Rs 25,000/- will be deducted by the colonizer.

29. Thus, the authority exercising power under section 37 of Real Estate (Regulation & Development) Act, 2016 issue directions to the respondent to refund the amount deposited by the complainant by deducting Rs 25,000 which comes to Rs 14,38,249/- within 90 days from date of order i.e. 18.09.2018.
30. The order is pronounced.
31. Case file be consigned to the registry.

(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.09.2018

