



HARERA
GURUGRAM

; .,HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह सिविल लाईस गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

**Complaint No. : 911/2019
Date of Decision : 11.02.2021**

**Dr. Anurag Bansal & Dr. Meetu Bansal
H.No.E-76, 2nd Floor, Kalkaji,
New Delhi-110019**

Complainants

V/s

**M/s Supertech Limited
1114, 11th Floor, Hemkunt Chambers,
89, Nehru Place, New Delhi**

Respondent

**Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Argued by:

**For Complainants:
For Respondent:**

**Shri Anil Aggawal, Advocate
None**

ORDER

This is a complaint under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017

Sd/- 11/2/2021

(hereinafter referred as the Rules of 2017) filed by Dr. Anurag Bansal and Dr. Meetu Bansal seeking refund of Rs.98,34,228/- deposited with the respondent for booking a flat bearing No.0302, 3rd Floor, M Tower, measuring 1430 sq. ft. in its project known as 'SUPERTECH HUES', situated in Sector 68, Gurugram for a sum of Rs.1,05,30,017/- besides taxes etc on account of violation of obligations of the respondents/promoters under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"Supertech Hues" Sector 68, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	0302, 3 rd floor Tower M
V.	Tower No. / Block No.	M
VI.	Size of the unit (super area)	Measuring 1430 sq ft
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	12.10.2013
XI.	Date of Allotment(original)	
XII.	Date of execution of ABA (copy of ABA be enclosed as annexure-B)	25.09.2014

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XIII	Due date of possession as per ABA	31.01.2019
XIV	Delay in handing over possession till date	9 months and 8 days
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 24 of Buyer Developer Agreement @ Rs.5/- per sq feet.

Payment details

XVI	Total sale consideration	Rs. 1,05,30,017/-
XVII	Total amount paid by the complainants	Rs.98,34,228/-

2. Brief facts of the case can be detailed as under.

A project by the name of 'Supertech Hues' situated in Sector 68, Gurugram was to be developed by the respondent. The complainants coming to know about the same through one of its channel partner approached it on 12.10.2013 and who offered to book a unit for a total sale consideration of Rs. 1,05,30,017/- and paid a sum of Rs.7,00,000/- as booking amount. A booking form C-1 was got filled/signed from the complainants. The unit in question was booked under a construction linked plan. Subsequently, on 25.09.2014 a Buyer Developer Agreement C-3 was executed between the parties and the due date of possession of the allotted unit was fixed January, 2019 inclusive of grace period of six months. The complainants started depositing various payments towards the allotted unit and deposited a sum of Rs.37,25,994/- with the respondent. It is the case of the complainants that after two years of signing of the Buyer Developer Agreement, it was assured to them by the respondent that the project would be completed very soon. So, they

were compelled to take a loan of Rs.72,03,705/- from India Bull Housing

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Finance Limited under the subvention scheme. A Memorandum of Understanding Annexure C was executed between the parties and vide which the respondent promised that it would bear the entire cost/interest for the loan amount until the possession of the allotted unit is handed over to them. It also led to execution of a Tripartite Agreement between the complainants, respondent and the financial institution i.e. India Bull Housing Finance Limited as Annexure C-5. It is the case of the complainants that without completing the construction of the project, the respondent realised a sum of Rs.61,08,234/- from M/s India Bull Housing Finance Limited and debited that amount in their account. So, in this way against the total sale price of Rs. Rs. 1,05,30,017/- a sum of Rs.98,34,228/- was paid by the complainants. Despite paying Rs.98,34,228/- of the total sale consideration, the respondent failed to complete the project and offer possession of the allotted unit by the due date i.e. January,2019. Since the respondent failed to complete the project and offer possession of the allotted unit, so the complainants withdrew from the project by sending a legal notice dated 02.02.2019 Annexure C-8. So, in this way, the respondent played a fraud on the complainants and failed to complete the project by the due date and fraudulently withdrew the amount of loan from the financial institution without filing progress report of the project. So, on this broad averments, they filed a complaint seeking refund of the entire amount deposited with the respondent besides interest and compensation

3. But the case of the respondent as set up in the written reply is that though the complainants booked a unit in its project known as Supertech Hues but it was denied that any mis-representation with regard to loan and completion of construction was made. It was denied that any false representation was ever made by its channel partner. Though the complainants

took a loan of Rs. Rs.72,93,705/- from India Bulls Housing Finance Limited under
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a subvention scheme but as agreed upon, the respondent was regularly paying pre-EMIs under that head and if any amount is due against the respondent, then it undertakes to pay the same within two/three months. It was denied that the respondent took signatures of the complainants on tripartite agreement or the same is the result of coercion. It was denied that the loan amount from India Bulls Housing Finance Limited was realised in the manner and in terms disproportionate to the progress of status of construction of the project of the unit booked by the complainants. Lastly, it was pleaded that the project is registered with Harera, Gurugram and the revised date of its completion is December, 2021. The complainants would be offered possession of the allotted unit very soon. When the project is near completion, then no refund of the deposited amount in favour of the complainants can be ordered.

4. All other averments made in the complaint were denied in toto.

5. I have heard the learned counsel for the complainants and have also perused the case file.

6. Some of the admitted facts of the case are that on 12.10.2013, the complainants booked a unit in the project of the respondent known as Supertech Hues situated in Sector 68, Gurugram by paying a sum of Rs. Rs.98,34,228/- against the total sale consideration of Rs.1,05,30,017/-. An Apartment Buyer Developer Agreement Annexure C-3 was executed between the parties on 25.09.2014 and which led to the complainants to deposit the remaining amount against the price of the allotted unit. They deposited a sum of Rs.37,25,994/- and the remaining amount was to be deposited later on. However, on 26.07.2016, there was an understanding between the parties to the dispute and vide which the case was taken up under the subvention scheme.

A Tripartite Agreement Annexure C-5 was executed between the parties to the

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dispute as well as India Bulls Housing Finance Limited and which led to advancement of a loan of Rs.61,08,234/- to the complainants and that amount was realised by the respondent on 09.08.2016. It was agreed upon in that document that the builder-respondent would file progress report of the project as well as of the unit with the financier and subsequently, the former would pay pre-EMIs of the loan advanced. Though that amount was initially paid for some time but the builder-respondent failed to pay the same to the financier and committed default in it. Thus, position is also evident from Annexure C-6 placed on record. So, ultimately, it led to the withdrawal of the complainants from the project by sending a legal notice Annexure C-8 dated 02.02.2019 and filing of present complaint seeking refund besides interest as well as compensation.

7. The contention of the complainants is that they withdrew from the project as the respondent failed to keep up its promise of delivering the possession of the allotted unit by due date i.e. January,2019. Secondly, though they took loan under the subvention scheme from India Bulls Housing Finance Limited to the tune of Rs. Rs.61,08,234/- but that amount was fraudulently realised without filing status of construction with the financier. Thirdly, as promised by the respondent, it failed to regularly pay pre-EMI of the loan amount to the financial institution and the complainants were burdened with that amount. So, in such a situation when the due date of completion of the project has already expired they do not want to continue with the project and seek refund of the amount deposited with the respondent.

8. The contention of the respondent as evident from the pleadings is otherwise and who stated that though the project could not be completed by

the due date but its registration has already been extended by the Hon'ble
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Authority upto 31.12.2021 as is evident from Annexure R-1. Secondly, though some amount of pre-EMI was paid but the remaining could not be paid and the same would be paid shortly. Thirdly, there were a number of factors leading to delay in completion of the project as downfall in real estate market, demonetisation, coming into force of GST etc. Moreover, the Act of 2016 was enacted to provide housing facilities with modern developed infrastructure and amenities to the allottees and to protect their interests in the real estate sector. So, if refund is allowed, then it may jeopardize the project which is not the intention of the legislature. It has also filed a number of photographs alongwith current status of the project as R-2 to show that the project would be completed soon. Hence, the complaint filed seeking refund is not maintainable.

9. The respondent placed on record certain documents to show the status of the construction of the project as Annexure R-1 and R-2 respectively. But whether these documents are sufficient to show that the project is likely to be completed by December, 2021 i.e. dead line given by the Hon'ble Authority. The answer is no. Those documents were placed on the record while filing written reply. No latest status report of the project as well as of the allotted unit has been placed on the record to inspire confidence of the allottees. The project in question was to be completed by the respondent by the due date i.e. July, 2018 with a grace period of six months i.e. January, 2019. Even upto to now neither the project is complete nor any offer of possession was made to the complainants. A perusal of Annexure 7 shows that Tower M, 22nd floor slab was to be laid by December, 2020. So, when the respondent is unable to complete the project in time and offer its possession to the allottees, then they cannot be made to wait indefinitely. In case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, the Hon'ble Apex Court allowed the refund of the amount

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deposited by the allottees with the developer besides interest at the rate of 9% p.a. when it was proved that there was delay in handing over the possession of the allotted unit. So, in such a situation, the respondent-promoter cannot seek to bind the complainants with one sided contractual obligations nor can ask them to wait for an offer of possession indefinitely after the due date has expired. A similar view was earlier taken by the Hon'ble Apex Court in cases of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725** and followed in **Wg Cdr. Ariful Rahman Khan & Others Vs DLF Southern Homes Pvt Ltd. 2020, SCC online SC 667** and wherein , it was held that when the respondent/builder failed to complete the project in time and deliver the possession of the allotted unit to the complainant as per allotment letter or the apartment buyer agreement, then the allottee has a right to ask for refund if the possession is inordinately delayed.

10. So, it is proved that there is delay in completion of the project and offering possession of the allotted unit to the complainants. Hence, they are legally entitled to seek a refund as per the provisions of Section 18 of Real Estate(Regulation and Development) Act, 2016 from the respondent.

11. Faced with such a situation, it is mentioned in the pleadings^{that} the construction of the project could not be completed due to stagnation, sluggishness, downfall of real estate sector-market, demonetisation as well as coming into force GST etc. But whether these circumstances are sufficient to extend the period for the respondent to complete the project and offer its possession to the complainants. The answer is in the negative. In case of **DLF Universal Ltd & Anr Vs Capital Greens Flat Buyers Association** etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020 , it was observed by the Hon'ble Apex Court of the land that delay

in approval of building plans and issuance of stop work orders as a result of

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fatal accidents during the course of construction being force majeure conditions cannot be taken into consideration in achieving timely completion of contractual obligations. Even there was an exit offer given to the flat buyers on two occasions and which also resulted in delay in completing the project. So all these circumstances were not considered sufficient for invoking *force majeure* conditions and which resulted in payment of delayed possession charges to the allottees by the builder. There was delay in completing the project and to offer its possession to the allottees. The Hon'ble Apex Court refused to buy the plea of the developer with regard to withdrawal of number of allottees from the project and stoppage of work for considerable period being force majeure to show non-completion of the work and allowed delayed possession charges. So, in such a situation when the complainants booked their unit with the respondent and paid more than 93% of the sale consideration by the year 2016, they cannot ask to wait indefinitely to take possession of that unit and particularly when the developer is neither offering its possession by the due date nor paying Pre-EMIs as promised. So, pleas raised in this regard on behalf of the respondent in the pleadings are devoid of merit.

12. Thus, in view my discussion above and taking into consideration all the material facts brought on the record by both the parties, it is held that the claimants are entitled for refund of the amount deposited with the respondent besides interest. Consequently, the following directions are hereby ordered to be issued to the respondent:

- i) To refund the entire amount of Rs.98,34,228/- besides interest @ 9.3.% p.a. from the date of receipt of each payment till payment of whole amount is paid to the complainants.

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ii) The respondent is also liable to pay a sum of Rs.1,00,000/- as compensation inclusive of litigation charges to the claimants.

13. This order be complied with by the respondent within a period of 90 days and failing which legal consequences would follow.

14. Hence, in view of my discussion detailed above, the complaint filed by the complainants against the respondent is ordered to be disposed off accordingly.

15. File be consigned to the Registry.

11.02.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
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Judgement uploaded on 18.02.2021