



HARERA
GURUGRAM

; HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी डब्ल्यू डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

Complaint No. : 2477/2018
Date of Decision : 15.02.2021

Nami Luthra
F-6, IDPL Apartments. Road No.44
Pitampura, Delhi-110019

Complainant

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 Complainant:
For Respondent:

Shri Rajinder Kumar, Advocate
Ms Bhawna Dhami, Advocate

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

Shri Rajinder Kumar
15/2/2021

(hereinafter referred as the Rules of 2017) filed by Ms Nami Luthra seeking refund of Rs.30,90,534/- deposited with the respondent for booking a flat bearing No.J/1102, measuring 1100 sq. ft. in its project known as 'SUPERTECH HUES', situated in Sector 68, Gurugram for a sum of Rs.87,63,480/- 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 complainant, 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.	A/1502, 15 th floor
V.	Tower No. / Block No.	M
VI.	Size of the unit (super area)	Measuring 1100 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)	13.10.2013 (J/1102)
XI.	Date of Allotment(original)	17.02.2014
XII.	Date of execution of ABA	Not executed
XIII.	Due date of possession as per ABA	July 2018

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XIV	Delay in handing over possession till date		
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA		

Payment details

XVI	Total sale consideration	Rs. 87,63,480/-
XVII	Total amount paid by the complainants	Rs.30,90,534/-

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 13.10.2013 and who offered to book a unit for a total sale consideration of Rs. 87,63,480/- and paid a sum of Rs.6,00,000/- as booking amount. The allotment of the unit was made under the construction linked plan. However, later, there was change in the lay out plan of the project and which led to change of booking of the allotted unit from J-1102 to A 1502 on 15th floor. A Builder Buyer Agreement was to be executed between the parties on 08.10.2015. But despite in between exchange of number a of emails/letters, the same could not be executed . A legal notice dated 08.05.2018. But seeking payment of Rs.36,53,878/- with interest was received from the respondent/builder and the same was replied. It is the case of the complainant that though she deposited a total sum of Rs.30,90,534/- with the respondent against the total sale consideration of Rs. 87,63,480/- but neither it executed any Builder Buyer Agreement nor possession of the same by due date i.e. July,

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2018 was offered. So, in such a situation, she withdrew from the project and sought refund of the amount deposited with the respondent.

3. But the case of the respondent as set up in the written reply is otherwise and who took a plea that though the allotment of the unit was made to the complainant but she failed to pay the amount due despite a number of reminders. Later on, the allottee was sent a booking form Annexure R/8. It was denied that there was any intention of the respondent to harass the complainant. It was, however, pleaded that there was no fault of the respondent in execution of Builder Buyer Agreement. In fact, the same was to be executed as per the provisions of RERA, 2016. It was admitted that the allotment of the unit was changed due to changes in the lay out plan and the complainant admitted the same to be correct and accepted that offer of allotment. Though a number of letters/emails Annexure R/5 were exchanged between the parties but the respondent never stepped out from its representations and responsibilities. Rather, it was complainant who failed to comply her obligations and execute the builder buyer agreement. It was also pleaded that the construction of the project has already been completed and some internal development works are to be taken up and the possession would be offered by the year 2021. Moreover, there was delay in completion of the project due to non-availability of steel/cement and other raw materials. There was shortage of water, power and slowdown etc and these factors were not in the control of the respondent. The construction activities could not be picked up due to various orders passed by the Environment Pollution Control Authority. So, if the refund of the deposited amount is allowed, then it will be detrimental to the project.

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

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

6. Some of the admitted facts of the case are that on 13.10.2013, the complainant booked an apartment measuring 1100 sq ft. with the respondent for a basic sale price of Rs. 87.63.480/- by paying a sum of Rs.6,00,000/-. The allotment of that unit changed by the respondent with the consent of the complainant/allottee. A total sum of Rs.30,90,534/- was deposited by the complainant with the respondent. It is evident that there is no builder buyer agreement executed between the parties. A number of letters/emails were exchanged between the parties and which shows that there were some issues with regard to its execution. So, in such a situation, the due date of possession of the allotted unit is to be taken from the date of allotment i.e. 17.02.2014 Annexure C-2 which comes to July, 2018. A number of pleas has been raised by both the parties with regard to non-execution of builder buyer agreement and the payment of the amount due. But the question in this case arises as to whether the claimant is entitled for refund of the amount deposited with the respondent/builder or is entitled to delayed possession charges only.

7. A reference in this regard may be made to copies of letters Annexures C-3 to 9. Neither the respondent sent any buyer agreement after incorporating the modification as requested by the complainant nor returned the amount de[posit]ed by her as is evident from email dated 10.04.2016. Lastly, there is another mail 31.10.2016 Annexure C-10 wherein some information was demanded by the complainant from the respondent. But nothing materialised and which led the complainant ultimately to withdraw from the project vide email dated 16.12.2016 and seek refund of the amount deposited with the respondent. The contention of the respondent/builder is otherwise and who

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took a plea that the project is complete and possession of the same would be offered to the complainant and other allottee by March 2021. Secondly, she is unaware as to whether the unit in question has been cancelled on 29.01.2021 and the amount deposited by the complainant has been forfeited. The letter with regard to cancellation of the allotted unit was placed on file by the complainant/allottee through her counsel during the course of hearing. Though the authenticity of this letter is to be proved but one thing is clear that despite withdrawing from the project in the year 2016 nothing materialised and the respondent failed to offer refund of the amount due after deducting the earnest money. So, in such a situation, whether any action on the part of the respondent/builder is fatal. The answer is in the positive. When the complainant was allotted a unit in project of the respondent, then as per the same action was to be taken. The complainant admittedly deposited more than Rs.30,00,000/- with the respondent and failed to get the builder buyer agreement executed in her favour. So, in such a situation, the due date of completion of the project would be taken from the date when the allotment of the unit in question was made i.e. from 02.07.2014. If it is taken, then four years were to be taken by the respondent to complete the project and the due date comes to July, 2018. The complainant deposited a sum of Rs.30,90,534/- with the respondent and withdrew from the project in April, 2016. So, in such a situation either the respondent should have accepted that offer by refunding the deposited amount minus ^{the} earnest money or rejected the same but did not act upon it. So in such a situation, as per provisions of Section 18 of the Act, 2016 when the complainant withdrew from the project before the due date, then the respondent was bound to return the amount deposited by the complainant. Hence, the plea of the respondent that the complainant cannot

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ask for refund of amount deposited with it is untenable and ^{she} is legally entitled to receive the same from it.

8. 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 claimant is 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.30,90,534/- besides interest @ 9.3.% p.a. from the date of receipt of each payment till payment of whole amount is paid to the complainant.
- ii) The respondent is also liable to pay a sum of Rs.20,000/- as compensation inclusive of litigation charges to the claimant.

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

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

11. File be consigned to the Registry.

15.02.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

15/2/2021

Judgement Uploaded on 18.02.2021