



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

43.

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

Complaint No. : 1682/2018
Date of Decision : 08.03.2021

Narmada Prasad Gupta & Smt. Usha Gupta
R/o House No. Q1/13, DLF ,Phase-II,
Gurugram-122002

Complainants

V/s

M/s Supertech Limited
1114, 11th Floor, Hemkunt Chamber,
89, Nehru Place, New Delhi-110019

Respondent

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

Argued by:

For Complainants:
For Respondent:

Shri Dharmender Sehrawat, Advocate
Shri Brighu 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 (hereinafter referred as the Rules of 2017) filed by Shri Narmada Prasad Gupta and Smt. Usha Gupta seeking refund of Rs.1,36,72,325/- deposited by them against allotment of Unit bearing No. A/12A 01, 12th Floor in Tower-2,

Success
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measuring 2215 sq.ft. in its project known as 'Araville', Sector 79, Gurugram against total sale consideration of Rs.1,41,04,400/-s on account of violation of obligations of the respondent-promoter 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	"Araville" Sector 79, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	A/12A01, 12A Floor,
V.	Tower No. / Block No.	Tower 'A'
VI.	Size of the unit (super area)	Measuring 2215 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)	28.05.2013
XI.	Date of Allotment(original)	-do-
XII.	Date of execution of BBA	23.10.2013
XIII.	Due date of possession as per BBA	30.04.2017
XIV.	Delay in handing over possession till date	More than 03 years

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So, they withdrew from the project and sought refund of the amount deposited with the respondent besides interest and compensation.

3. But the case of the respondent as set up in the written reply is otherwise and who took a plea that though the complainants booked a unit in its project on 28.05.2013 and deposited various amounts but there was delay in making payment. It was denied that the construction of the project is not going on at a fast pace. In fact, 90% of the construction of the project has been completed and the answering respondent expects to offer possession of the allotted unit to the complainants and other allottees by December, 2021. Moreover, the respondent has received occupation certificate for two other towers in the same project and possession of the same has been offered to the allottees. It was pleaded that due to slow down, shortage of labour and various restraint orders passed by different authorities and demonetisation, the pace of construction could not be pick up. It was denied that the complainants are entitled to withdraw from the project and to seek refund of the amount deposited with it. Moreover, If the complainants are allowed to do so, then it may be detrimental to the interest of the project and other allottees resulting in collapse of the project. Lastly, it was pleaded that the matter is sub-judice before the Hon'ble Apex Court of the land and so, the complaint seeking refund of the deposited amount is not maintainable.

4. I have heard the learned counsel for both the parties and who reiterated their position as stated above.

5. Admitted facts of the case are that on 28.05.2013, the complainants booked a unit in the project of the respondent known as Araville, Sector 79, Gurugram for a total sum of Rs.1,41,04,400/- and paid different amounts

upto 05.10.2018 to the tune of Rs.1,36,72,325/-. A Flat Buyer Agreement
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Annexure P/2 was executed between the parties on 23.10.2013. As per clause E1 of that document, the possession of the allotted unit was to be offered to the complainant by October, 2016 with a grace period of six months i.e. 30.04.2017. It is a fact that by due date, the possession of the allotted unit was neither offered to the complainants after receipt of occupation certificate nor there is anything on record to prove that that. So, that led the complainants to move the respondent for withdrawal from the project vide Annexure P/6 dated 07.05.2018. and seeking refund of the amount deposited with it besides interest and compensation. The contention of the learned counsel for the complainants is that since the respondent was unable to complete the project and offer its possession by due date, then the allottees are not under an obligation to wait indefinitely and continue with the project. A reference in this regard has been made in Section 18 of Real Estate(Regulation and Development) Act, 2016 which provides as under:

Return of amount and compensation-

(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)*
He shall be liable to demand to the allottee, 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.

A perusal of the above mentioned provision of law shows that the complainants were entitled to withdraw from the project if the respondent failed to offer possession of the allotted unit to them by the due date. In case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by

the Hon'ble Apex Court of the land that when the builder is unable

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to complete the project and offer possession of the allotted unit to an allottee, then he is obligated to refund the entire amount deposited with him. The contention of the learned counsel for the respondent is otherwise and who took a plea that due to certain circumstances beyond the control of the builder, the project could not be completed. Moreover, its construction is going to be completed very soon. But the plea advanced in this regard is devoid of merit. Though the version of the respondent that the construction of the project is complete upto 90% but no document worth the name has been placed on the file. The best evidence in this regard would have been some quarterly progress reports filed with the Hon'ble Authority or some other document to prove the extent of construction at the spot. No such effort was made which shows that the plea of the respondent in this regard is untenable. No doubt, the respondent might have completed the construction of some other towers in that project and offered possession to the allottee but no evidence is forthcoming to prove the extent of construction of the project in which the unit of the complainants is located. The plea of the respondent that if refund is allowed, then it may not be good for the health of the project is untenable as the allottee cannot be forced to wait indefinitely for completion of the project and take possession. A period of more than three years has already passed and the complainants have paid more than 90% of the amount of the allotted unit to the respondent. So, in such a situation, as per provisions of Section 18 of Real Estate (Regulation and Development) Act, 2016, the complainants are entitled to seek refund of the amount deposited with the respondent.

6. Lastly, it was pleaded on behalf of the respondent that the complaint is premature as the matter is sub-judice before the Hon'ble Apex Court of the land. There is no dispute about that fact. The State of Haryana amended some rules framed under the Real Estate (Regulation and Development) Act,

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2016 and validity of the same was challenged before the Hon'ble Punjab & Haryana High Court and who affirmed the same. But the Hon'ble Apex Court of the land stayed operation of that judgment. So, it shows that there is *status qua ante* and the complaint filed by the complainants seeking refund before this forum is not barred.

7. 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.1,36,72,325/- besides interest @ 9.3.% p.a. from the date of receipt of each payment till payment of whole amount is paid to the complainants.
- ii) The respondent is also liable to pay a sum of Rs.50,000/- as compensation inclusive of litigation charges to the claimants.

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

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

10. File be consigned to the Registry.

08.03.2021


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


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Judgement uploaded on 10.03.2021