



HARERA
GURUGRAM

S; .,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: 3727/2020

Date of Decision : 04.03.2021

Sanjeev Kumar
H No.517/21,Gali No.3, near Shiv Mandir
Narender Nagar, Sonipat, Haryana

Complainant

V/s

M/s Revital Reality Pvt. Ltd.
703 & 704,Tower A, Signature Towers
South City-1, Gurugram

Respondent

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

Argued by:

For Complainant:

Km. Juhi, Advocate

For Respondent:

Shri Bhrigu 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 Sanjeev Kumar seeking refund of Rs.9,81,125/- deposited with the respondent for booking

a flat No.910, measuring 473 sq ft. in its project known as "Supertech

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Basera" situated in Sectors 79 and 79B Gurugram besides taxes etc 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 complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"SUPERTECH BASERA" Sector 79 & 79B, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	Flat no. 910
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 473 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)	20.04.2015
XI.	Date of provisional allotment(original)	19.09.2015
XII.	Date of execution of FBA (copy of FBA be enclosed as annexure-B)	24.12.2015
XIII.	Due date of possession as per FBA	24.12.2015
XIV.	Delay in handing over possession till date	

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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. 1,28,18,354/-
XVII	Total amount paid by the complainants	Rs.32,10,240/-

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

In pursuant to advertisement with regard to its project known as 'SUPERTECH BASERA' under the Affordable Housing Policy -2013 of the State of Haryana, the complainant applied for allotment of flat on 16.04.2015 vide application No.6631 by paying sum of Rs.96,425/-. An acknowledgement in this regard was issued as Annexure 1 and the draw of lots was held on 04.09.2015. The complainant being successful, he was allotted unit No. 910 by the respondent on 19.09.2015 vide Annexure 2. A Flat Buyer Agreement Annexure 3 was executed between the parties on 24.12.2015. In pursuance to that allotment, the complainant started paying various amounts to the respondent and paid a total sum of Rs.9,81,125/- upto 10.09.2016. It is the case of the complainant that since the construction of the project in which he was allotted the unit was going on at a slow pace, so he decided to withdraw from the project and sought refund of the amount deposited vide Annexure P/5 and P/6 respectively. He withdrew from the project and sought cancellation of his unit in view of terms and conditions of allotment mentioned at clause 2.3 in the FBA. However, the respondent failed to respond to the cancellation of the allotted unit. So, the same led to issuance of legal notice Annexure 7 by him on 21.11.2018.

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When despite oral/written reminders, the respondent failed to cancel the allotted unit, a complaint seeking refund of the deposited amount as detailed above was filed.

3: But the case of the respondent as set up in the written reply is that though the complainant was allotted a unit under the Affordable Housing Policy of the Government of Haryana but he executed various documents including FBA after understanding their implications. It was denied that the construction of the project is going on at a slow pace. It is going to be completed very soon and the respondent undertakes to complete the construction and offer possession of the allotted unit to the complainant soon. It was also pleaded that due to slow down, shortage of labour, various restraint orders passed by different authorities and demonetisation etc, the pace of construction could not pick up. It was denied that the complainant is entitled to withdraw from the project and is entitled to seek refund of the amount deposited with it. Lastly, it was pleaded that the matter is sub-judice before the Hon'ble Apex Court of the land and so, the complaint filed by the complainant seeking refund of the deposited amount is not maintainable.

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

5. Admitted facts of the case are that on the basis of an application received from the complainant on 20.04.2015, he allotted a unit in question on 19.09.2015 vide Annexure 2. A Flat Buyer Agreement Annexure 3 dated 24.12.2015 was executed between the parties. In pursuance to that the claimant started deposited various amounts towards allotment and paid a total sum of Rs.9,81,125/-upto 10.09.2019. It is the case of the complainant that the construction of the project was going at a slow pace and the same

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was not likely to be completed within the stipulated period. So, he opted to withdraw from the project by writing email dated 27.10.2016 Annexure P/6 and sought refund of the amount deposited with the respondent minus earnest money to the tune of Rs.25,00,000/-. The contention of the learned counsel for the respondent is that the complainant could not have withdrawn from the project and he is liable to pay the remaining amount against the allotted unit. To appreciate the rival contentions advanced by both the parties, a reference can be made to the Affordable Housing Policy-2013 issued by the Govt of Haryana on 19.08.2013 and which provides under clause 5(h) as follow:

A waiting list for a maximum of 25 of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. In case of surrender of flat by any successful application, an amount of Rs.25,000/- may be deducted by the coloniser.

6. Similarly, a reference to the terms and conditions of flat buyer agreement A/3 is also ^{to be} made and the same provides under clause 2.3 as under:

It is specifically agreed that an amount of Rs.25,000/- shall be treated as Earnest Money. The earnest money shall be liable to be forfeited in the event of withdrawal of allotment by the allottee/buyer and or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalment. In the eventuality of withdrawn/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the allottee/buyer, without any interest and such refund shall made only when the said flat is re-allotted/sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/buyer

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7. It is evident from a perusal of the above mentioned two documents that the complainant being found eligible for allotment of the unit in question was allotted the same on 19.09.2015 vide annexure P/2 which led to execution of FBA between the parties. The clause 2.3 of the same read with clause 5(iii) and H provides that a sum of Rs.25,000/- shall be treated as earnest money and the same shall be forfeited in the event of withdrawal by the complainant/allottee. It is not disputed that vide Annexure 6, the complainant sought to know the procedure for withdrawal from the project. It was followed by another email dated 31.10.2016 and the same may be reproduced as under:

*On Monday, 31 October, 2016 6:03 PM. sanjeev kumar
sanjeev196@yahoo.co.in wrote:*

Dear Sir,

Please note I have taken this decision considering my present financial conditions. I have paid the instalment in September with so much difficulties. Unfortunately might be not able to pay the next instalment which would fall in March 2017.

I am ready to bear the loss of Rs.25000 which is written in the agreement and whatever the process, whatever the time, I request you to please proceed [with cancellation process of my unit.

Waiting for a positive response from you this time.

I need your help and support to get out of my present financial condition by cancelling my unit and refunding the amount.

Regards.

The above mentioned mail was followed by another mail dated 10.11.2016 and the same was as under:

*On Thu, Nov 10, 2016 at 2.42 PPM, Supertech CRM Team
>crm@supertechlimited.com> wrote:*

Dear Sir,

Greetings!!!

We do understand your situation; but as informed currently our company policy does not permit us to confirm any specific time for providing the refund as being requested by you. We request you to continue

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your association with us and you shall be updated once refund policy is reinstated.

Regards

Team CRM

8. It is evident from the exchange of emails between the parties under dispute that the complainant applied for cancellation of unit as per clause 25 of FBA and ~~he~~^{the} was ready to bear ^{the} loss of Rs.25,000/- being earnest money. But despite that the respondent was not ready to consider his request for cancellation and rather, requested the complainant to continue his association with the respondent. There are also some emails exchanged between the parties but the same did not produce the desired results. So, it ultimately led the complainant to issue legal notice Annexure 7 dated 12.12.2016 and filing of complaint on 23.10.2020. So, from all this, it cannot be said that the complainant was not entitled to withdraw from the project as per Affordable Housing Policy of the State of Haryana and ^{the} terms and conditions embodied in FBA. So, the plea of the respondent that it is not liable to refund the amount deposited with it by the complainant minus the earnest money of Rs.25,000/- is untenable.

9. Faced with this situation, it is contended on behalf of the respondent that the project is at ^{an} advanced stage and if the complainant is allowed to withdraw from the project, then it may hamper its progress. Even the Hon'ble Authority in cases of Shri Krishna Wats Vs M/s CHD Developers Ltd.- complaint No. 578 of 2019, Aman Sood- Vs M/s BPTP Ltd.- complaint No.1194 of 2018,, Abhishek Agarwal & Anr Vs M/s Cosmos Infra Engineering India Pvt Ltd.- complaint No. 1834/2018, Pramod Kumar Vs SS Group Pvt Ltd- Complaint No. 63/2018, Puneet Dhar Vs Supertech Limited- Complaint No.743 of 2018, Rajiv Kohli Vs Supertech Limited-complaint No.1603 of 2018 and Renuka Sharma Vs Supertech Limited-complaint No.732 of 2018,

took a view that when a project is at advanced stage, then refund should not

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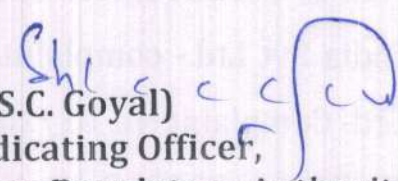
be allowed and only delayed possession charges can be allowed. There is no dispute about the ratio of law laid down in above cases. In fact, all these cases were filed by the allottees seeking refund/delayed possession charges or refund respectively. But none of the cases detailed above refer to the affordable housing policy under which allotment of the unit was made to either of the complainants. So, the plea of the respondent that it is not liable to return the amount deposited by the complainant minus the earnest money is untenable.

10. Lastly, it is pleaded on behalf of the respondent that the complaint filed by the complainant seeking refund is not maintainable as the issue in this regard is pending before the Hon'ble Apex Court of the land. No doubt, rules framed by the State of Haryana under the Act, 2016 were challenged before the Hon'ble High Court and the same were affirmed but that order has been stayed by the Hon'ble Apex Court of the land. So, it shows that there is *status qua ante* and filing of the complaint by him is no bar. So, the plea advanced in this regard on behalf of the respondent is devoid of merit.

11. Thus, in view of my discussion above, the complaint filed by the complainant is hereby ordered to be accepted. Consequently, the respondent is directed to refund a sum of Rs.9,81,125/- minus Rs.25,000/- towards earnest money to the complainant within a period of 90 days failing which it would be liable to pay that amount with interest @ 9.30% p.a. from the expiry of 90 days.

12. File be consigned to the Registry.

04.03.2021


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

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Judgement uploaded on 10.03.2021