

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. : 3565/2020
Date of Decision : 19.03.2021**

**Vijay Singh & Sushila Devi
R/o Plot No.17, First Floor,
K3.1 Vatika India Next, Sector 83
Gurugram**

Complainant

V/s

**M/s Re vital Reality Pvt Ltd.
Yagana, 114, Hemkunt Chambers,
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 Nahar Singh, AR of the complainants
Shri Rudresh Jagdale, 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 Vijay Singh and Sushila Devi seeking refund of Rs.11,15,799/- deposited with the respondent-builder for booking a residential unit No.903 T-0 measuring 639 sq ft. in its project known as 'The Valley' situated in Sector 78, Gurugram for a total sum of Rs.22,09,500/-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 complainants, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"The Valley" Sector 78, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	903
V.	Tower No. / Block No.	T-0
VI	Size of the unit (super area)	Measuring 639 sq ft 2 BHK
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)	15.11.2018
XI	Date of Allotment(original)	02.03.2019

XII	Date of execution of BBA (copy of BBA enclosed)	28.06.2019
XIII	Due date of possession as per BBA	Within four years
XIV	Delay in handing over possession till date	More than two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	
Payment details		
XVI	Total sale consideration	Rs.22,09,500/-
XVII	Total amount paid by the complainants	Rs.11,15,799/-

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

A project known by the name of "The Valley" situated in Sector 78, Gurugram was to be developed by the respondent-builder. The complainants were in need of a house. So, on 15.11.2018 they applied for 2 BHK flat in the above mentioned project of the respondent and paid 5% of the total cost of the unit after draw of lots. The complainants were allotted the above mentioned unit on 02.03.2019 vide letter Annexure P/2. A Builder Buyer Agreement Annexure P/3 dated 28.06.2019 was executed between the parties. The complainants started depositing various amounts towards the costs of the allotted unit and paid a total sum of Rs.11,15,799/- upto March, 2020. It is their case that since they did not want to continue with the allotted unit, so vide letter dated 12.04.2020 Annexure P/4 they withdrew from the project. Even vide Annexure P/5 dated 06.06.2020, they surrendered hard copies of BBA, letter of allotment, surrender deed and other documents with the respondent at its office situated in Sector 65,

Gurugram. But despite that neither the respondent accepted the surrender request nor returned the amount deposited by them. A number of calls as well as communications through emails were exchanged between them but without positive result. So, on these broad averments, the complaints filed this complaint seeking refund of the amount deposited with the respondent besides interest.

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 and deposited different amounts after execution of various documents but they are investors and did not approach this forum with clean hands. It was submitted that the possession of the allotted unit was to be offered to the complainants within four years from the date of obtaining environment clearance certificate. Moreover, the project detailed above is registered with Harera Authority, Gurugram and its validity has been extended upto 31.10.2022. It was pleaded that real estate is suffering on account of shortage of labour, raw-material and various other restraint orders passed by the competent authorities. So, every effort would be made to complete the project and offer possession of the allotted unit to the complainants. It was also pleaded that though the complainants applied for cancellation of their allotted unit but that can only be accepted by forfeiting a sum of Rs.25,000/- towards earnest money. It was denied that there was any delay in processing the case of the complainants. Lastly, it was pleaded that the complaint filed by the complainants is premature as the matter is sub-judice before the Hon'ble Apex Court of land.

4. All other averments made by the complainants were denied in toto.

Handwritten signature and date:
10/12/2021

5. I have heard the arguments advanced on behalf of both the parties through their respective counsel/AR and have also gone through the case file.

6. Admitted facts of the case are that on the basis of an application dated 15.11.2018, the complainants were allotted a unit bearing No.903 in Tower O, measuring 639 sq ft. in the project of the respondent known as "The Valley" situated in Sector 78, Gurugram for a total sum of Rs. 22,31,595/- on 02.03.2019 vide letter of allotment Annexure P/2. A Builder Buyer Agreement Annexure P/3 dated 28.06.2019 was executed between the parties and as per the same, the possession of the allotted unit was to be offered to the complainants/allottees within four years from the date of approval of environment clearance, building plans or execution of BBA whichever is later as per clause 8.2 of that document. The complainants admittedly deposited a sum of Rs.11,15,799/- upto March, 2020 and withdrew from the project on 12.04.2020 by writing emails Annexure P/4. Then, it is not in dispute that the complainants also surrendered the original documents with regard to allotment of the unit in question vide letter Annexure P/5 and the same was accepted by the respondent-builder. So, now the moot question for consideration arises as to whether the allottees were entitled to withdraw from the project before the due date and are entitled for refund of the amount deposited with the respondent minus Rs.25,000/- towards earnest money. It is contended on behalf of the respondent that the complainants could not have withdrawn from the project and they are liable to pay the remaining amount against the allotted unit. But to appreciate the rival contentions advanced by both the parties, a reference can be made to the Affordable Housing Policy, 2013 issued by the Government 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.

7. Similarly, a reference to the terms and conditions of Builder Buyer Agreement dated 28.06.2019 Annexure P/3 is also to be made and the same provides under Clause 8.5 is as under:

***Cancellation by Allottee-** The allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act.*

Provided that where the allottee proposes to cancel/ withdraw from the Project, the promoter herein in entitled to forfeit the said Forfeitable Amounts from the amount paid by the allottee(s) and shall refund the balance amount of money to the allottee.

8. It is evident from perusal of the above mentioned documents that the complainants being found eligible for allotment of the unit in question were allotted the same on 02.03.2019 vide P/2 and which also led to execution of BBA Annexure P/3 on 28.06.2019. A perusal of clause 8.5 read with clause 5(3)(h) detailed above provides that a sum of Rs.25,000/- shall be treated as earnest money and the same would be forfeited in the event of withdrawal by the complainant/allottee. It is not disputed that vide Annexure P/4 dated 12.04.2020, the complainants withdrew from the project and surrendered the allotted unit. This communication was followed by other emails dated 13.04.2020, 06.05.2020 and 06.06.2020. These communication can be reproduced as under:

19/2/2021

On Sun Apr 12, 2020 at 9.46PM Vijay Singh
vijaysingh059@gmail.comwrote:

Dear CRM Team

Hope Supertech family is safe and in good health!

This is to inform you that I am surrendering my allotted unit no.903 in Tower-O in "The Valley" project. Considering this date, i.e. 12th April, 2020 please accept my surrender of the said unit. I will return the BBA in your Gurgaon office. Please process my refund.

Dear CRM,

Supertech Limited

Gurugram, Haryana

Subject: Surrender of unit "Tower-O and Flat No.-903 in "The Valley" project

II

With reference to the mail sent 'surrender of unit O-903 in The Valley project on 12th April, 2020, we would like to surrender the allotted unit No.903 in tower-O in The Valley project.

The reasons for surrendering the unit is a financial problem occurred due to the unprecedented situation of Covid-19.

We are urgent need of money, so, this is a kind request to the management of Supertech Limited to process the refund of money paid so far i.e. INR 11,15,799/- (INR eleven lakh fifteen thousand seven hundred and ninety nine) after deducting the cancellation charges.

We would be extremely thankful to Supetech Limited for the kind support in processing the refund at the earliest.

Thank you!

Dated:12th April, 2020

Vijay Singh and Sushila Devi

Unit No.O-903, Mob. 9654285829

Email:vijysingh059@gmail.com.

III

On Mon, Apr 13,2020 at 1.46PM Vijay Singh
vijaysingh059@gmail.com.wrote:

Dear CRM Team,

Please confirm within how many days I will receive my refund. Hope an early response and kind support from you.

Thanking you!

Best Regards Vijay Singh

IV

On Wed, May 6,2020 t 11.01 AM Vijay Singh
<vijaysingh059@gmail.com

Dear Trisha,

Ch...
18/5/2020

Request you to please provide the list of documents which need to be submitted and I would request to please process my refund as soon as possible as I am in real need of these funds.

Your kind support would be high appreciated.

Best Regards

CA Vijay Singh

ACA/N.Com.

9. Though these communications were answered but elicited no positive response. So, it is evident from the exchange of emails between the parties that the complainants applied for cancellation of the allotted unit as per clause 8.5 of BBA and they are ready to bear a loss of Rs.25,000/- being the earnest money. But despite that respondent was not ready to consider their request for cancellation of the unit and rather requested them to continue their association with it. Thus, it is evident that the complainants were entitled to withdraw from the project as per Affordable Housing Policy-2013 of the State of Haryana and the terms and conditions embodied in the Builder Buyer Agreement. So, the plea of the respondent that they are not entitled to the refund the amount deposited with it minus Rs.25,000/- towards money is untenable.

10. Faced with this situation, it is contended on behalf of the respondent that the project is at an advanced stage and if the complainants are allowed to withdraw from the project, then it may hamper the progress of the project. But the plea advanced in this regard is devoid of merit. When there are specific provision under the Affordable Housing Policy-2013 of the State of Haryana as well as BBA, then the respondent cannot compel the complainants to continue with the project and seek refund of the amount deposited with it minus Rs.25,000/- towards earnest money. So, the plea of the respondent in this regard is untenable.

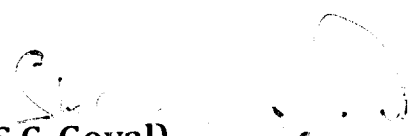
Ck
10/4/2022

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

12. Thus, in view of my discussion above, the complaint filed by the complainants is hereby ordered to be accepted. Consequently, the respondent is directed to refund a sum of Rs.11,15,799/- minus Rs.25,000/- (on account of earnest money) to the complainants within a period of 90 days and failing which it would be liable to pay interest @ 9.30%p.a. at that amount.

13. File be consigned to the Registry.

19.03.2021


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

Judgement Uploaded on 30.03.2021