



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. : 3120/2020
Date of Decision : 02.03.2021

Capt U K Bhardwaj & Komal Bhardwaj
H.No.236,Defence Officers Enclave Part-2
Ridge Road, Dhaula Kuan
New Delhi -110010

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:

Capt UK Bhardwaj, complainant
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 Capt. U K Bhardwaj and Ms Komal Bhardwaj seeking refund of Rs.69,81,404/- deposited with the respondent for booking a flat bearing No.E29A, Ist Floor measuring 1720 sq. ft. in its project known as 'SUPERTECH HILL TOWN', situated in Sector 2, Sohna,(Gurugram) for a sum of Rs.74,23,520/- 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	"Supertech Hill Town" Sector 2, Sohna, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	E29A, Ist Floor
V.	Tower No. / Block No.	E-29
VI	Size of the unit (super area)	Measuring 1720 sq ft 3 BHK+three toilets
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)	23.05.2016
XI	Date of Allotment(original)	10.08.2016

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XII	Date of execution of FBA (copy of FBA enclosed)	10.08.2016
XIII	Due date of possession as per FBA	June , 2019
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 FBA	As per clause 26 of the Allotment letter compensation @ Rs.5/- per sq feet per month of the area of the unit
Payment details		
XVI	Total sale consideration	Rs. 74,23,520/-
XVII	Total amount paid by the complainants	Rs.69,81,404/-

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

A project known by the name of 'Supertech Hills Town' situated in Sector 2, Sohna, Gurugram was to be developed by the respondent. The complainants coming to know about the same expressed an interest and booked 3 BHK measuring 1720 sq.ft. for a total sum of Rs.74,23,520/- under the subvention scheme and paid different amounts. An allotment letter P5/14 in this regard was issued. It is the case of the complainants that booking of an apartment was made under the subvention scheme. A Tripartite Agreement Annexure P/4/14 dated 28.07.2016 was executed between the parties and the financial institution, namely, the Indiabulls Housing Finance Ltd. In pursuant to allotment letter Annexure P/5/14, the complainants deposited various amounts with the respondent. Even the amount of loan to the tune of Rs. 62,05,760/- taken under the subvention scheme from M/s Indiabulls Housing Finance Ltd was also deposited with

the respondent. So, in this way, the complainants deposited more than 95% of the cost of the apartment with the respondent. The due date for completion of the project and offering possession of the allotted unit was June, 2019 with a grace period of six months. However, the respondent was unable to complete the project by due date and offer its possession. So, the same led the complainants to withdraw from the project by writing emails Annexure P/11/14 and Annexure P 12/14 on 08.05.2019 and 18.05.2019 respectively. When despite a number of reminders, the respondent failed to cancel the unit and return the amount deposited, then the complaint seeking refund of the amount as prayed above was filed by the complainants.

3. But the case of the respondent as set up in the written reply dated 23.02.2021 is otherwise. It was pleaded that the complainants booked a unit with it under the subvention scheme. But it was denied that there was any intentional delay in completing the project. It was pleaded that due to force majeure events beyond its control, the construction of the project could not be completed in time. It was pleaded that every effort is being made to complete the project and offer possession of the allotted unit to the complainants. Moreover, the project in which the complainants was allotted a unit is registered with the Hon'ble Authority, Gurugram and the same would be completed soon. Lastly, it was pleaded that the complaint filed the complainants is not maintainable before this forum.

4. I have heard the learned counsel for the parties and have also perused the case .

Some of the admitted facts of the case are that vide Letter of allotment Annexure P-5/14, the complainants were allotted a unit No.T29/E29 having a super area of 1720 sq ft. by the respondent-builder in its project known as Supertech Hill Town, Sector 2, Sohna, Gurugram for a total sum of Rs.

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74,23,520/-.The allotment of that unit was made under the subvention scheme as is evident from the document Annexure P/4/14. Under that scheme, the complainants were sanctioned a housing loan of Rs.62,05,760/- by M/s Indiabulls Housing Finance Limited and the same was paid to the respondent-builder on behalf of the complainants. The due date for completion of the project and handing over of possession of the allotted unit as per clause 56 of allotment letter was June, 2019 with a grace period of six months i.e. December, 2019. It is a fact that neither up to that date nor even upto now the respondent offered possession of the allotted unit to the complainants. So, in pursuant to clause 34 of allotment letter, the complainants exercised the option and withdrew from the project of writing emails Annexure P/11/14 and Annexure P-12/14. But upto now neither any reply to the same was received nor the respondent cancelled the allotted unit and refunded the amount after deducting 15% as per clause 34 of Allotment Letter. The contention of the learned counsel for the respondent is that the allotted unit was booked under the subvention scheme. Neither the financier has been made a party nor it proved that as to whether the complainant shall pay the loan amount to it. Moreover, the project of the respondent is near completion and its possession would be handed over soon to the allottees. Thirdly, the due date for completion of the project and handing over the possession of the allotted unit has been extended by the Hon'ble Authority and every effort is being made to complete the project. Lastly, the matter is sub-judice before the Apex Court of the land and the complaint filed by the complainants seeking refund of the deposited amount is not maintainable. But all these pleas taken in this regard are devoid of merit. The complainants booked a unit under the subvention scheme and loan in this regard was advanced by M/s Indiabulls Housing Finance Ltd. A

Builder Buyer Agreement-cum-Allotment letter dated 02.08.2011 Annexure
Shri 2/2/2011

P-5/14 was executed between the parties. A perusal of the same shows that as per clause 26, the possession of the allotted unit was to be delivered to the complainants/allottees by the respondent-builder by June, 2019 with an extended grace period of six months i.e. by December, 2019. It is also a fact that in pursuant to Tripartite Agreement entered into between the parties, the respondent-builder agreed to assume the liability on account of interest payable by the borrower to M/s Indiabulls Housing Finance Ltd during the period to be referred to as the "Liability Period". Admittedly, neither the respondent-builder completed the project by the due date nor offered possession of the allotted unit to the complainants and which led to their withdrawal from the project and seek refund of the amount deposited with it. The main plea advanced on behalf of the respondent is that though the allotment of the unit in question was made under the subvention scheme but the project could not be completed due to various reasons such as shortage of labour, demonetization, restraint orders passed by different authorities and which should be taken into consideration. Moreover, the time for completion of the project has been extended by the Harera Gurugram by 30.06.2021 and every effort would be made to complete the project within that time. But the plea advanced in this regard on behalf of the respondent-builder is devoid of merit. It is evident from perusal of clause 26 of allotment letter P-5/14 that possession of the allotted unit would be delivered to the allottees by June, 2019 with a grace period of six months i.e. by December, 2019 Then, there is clause 34 with regard to cancellation of booking/allotment and which provides as under:

CANCELLATION OF BOOKING/ALLOTMENT

34. That in case the allottee(s), any time desires for cancellation of the provisional allotment due to any reason whatsoever, then in such case earnest money i.e. 15% of the total cost/price of the Floor/Apartment shall be forfeited and the balance shall be refunded without any interest.

The refund shall be made only after the sale of the said allotted Floor/Apartment to any intending third party. The Allottee(s) shall submit the required documents i.e. affidavit, application etc for such cancellation and taking refund.

6. It is evident from perusal of above mentioned terms and conditions of the allotment letter that the possession of the allotted unit was to be offered to the complainants by June, 2019. It is a fact that even up to now, the respondent-builder has failed to complete the project and offer possession of the allotted unit to the complainants. Then, an option has been given to the allottees with regard to cancellation of booking/allotment and withdrawal from the project. Since the respondent-builder failed to complete the project and offer possession of the allotted unit to the complainants, so as per terms and conditions of allotment and particularly mentioned at clause 34, the complainants exercised that option and withdrew from the project. So, in such a situation, the respondent-builder is bound to return the amount deposited by the complainants with it. The plea of the respondent that due to force majeure factors, it was unable to complete the project and hand over its possession to the allottees is devoid of merit. 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 fatal accident 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. Moreover, the unit in question was booked by the complainants under subvention scheme and they paid almost the total amount to the respondent. 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 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. Even now, there is nothing on record to show that status and extent of the construction of the allotted unit and its likely time of completion. Neither any copy of quarterly return filed with the Hon'ble Authority has been placed on record nor there is any other evidence to suggest that the project is near completion and its likely handing over to the allottees in June, 2021. So, taking into consideration all these facts, it is evident that when the complainants withdrew from the project as per terms and conditions of allotment, then they are not obligated to take possession of the allotted unit and are entitled to seek refund of the amount deposited with the respondent-builder from each date of payment till the payment of the whole amount besides interest @ 9.30% p.a. and compensation to the tune of Rs.20,000/-.

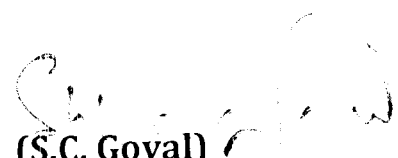
7. Thus, in view of the discussion above, the complaint filed by the complainants is hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued:

- I. The respondent is directed to refund a sum of Rs.69,81,404/- besides interest @ 9.30% p.a. from the date of each payment till the payment of the whole amount to the complainants;

2/3/21

- II. The amount of Pre-EMIs paid by the respondent-builder in the loan account of the complainants, if any, would be deducted while calculating total amount due towards them;
- III. The loan amount received by the complainants against the allotted unit and paid to the respondent-builder would be a charge payable to M/s Indiabulls Housing Finance Ltd.-financer and the same would be paid prior to paying the deposited amount to the complainant;
- IV. There would be a charge on the allotted unit bearing Tower E29/E29, First floor, measuring 1720 sq ft and situated in the project known as "Supertech Hills Town" Sector 2, Sohna, Gurugram till whole of the amount detailed above is paid by the respondent-builder to the financer as well as the complainants. It is further debarred from creating third party rights and selling that unit without paying the amount due.
8. File be consigned to the Registry.

02.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 2015201

Judgement Uploaded on 30.03.2021