



**HARERA**

**HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**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. : 1057/2020**

**Date of Decision : 19.03.2021**

**Rahul Aggarwal & Pooja Aggarwal  
R/o B-178, 2<sup>nd</sup> Floor, C.R. Park,  
New Delhi-110019**

**Complainants**

**V/s**

**M/s Supertech Ltd.  
1114, 11<sup>th</sup> Floor, 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 Rahul Aggarwal in person**

**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

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(hereinafter referred as the Rules of 2017) filed by Shri Rahul Aggarwal and Smt .Pooja Aggarwal seeking refund of Rs.22,70,356/- deposited with the respondent-builder for booking a residential unit No.A-1802 18<sup>th</sup> Floor, Tower-A of its project known as 'Araville', situated in Sector 79, Gurugram against a total sale consideration of Rs.1,05,17,005/-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:

<b>Project related details</b>		
I.	Name of the project	"Araville" Sector 79, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	A-1802, 18 <sup>th</sup> floor
V.	Tower No. / Block No.	Tower A
VI	Size of the unit	Measuring 1945 sq ft.
VII	Size of the unit	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	28.07.2012
XI	Date of Allotment(original)	
XII	Date of execution of FBA (copy of FBA enclosed)	09.07.2014

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XIII	Due date of possession as per FBA	October, 2016 with a grace period of six months
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	R.5/- per sq ft of super area of unit per month for the period of delay.

**Payment details**

XVI	Total sale consideration	Rs.1,05,17,005/-
XVII	Total amount paid by the complainants	Rs.1.22.70.356/-

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

A project known by the name of 'Araville' situated at Sector 79, Gurugram was to be developed by the respondent-builder. The complainants coming to know about the same, booked the above mentioned unit in that project for a total sale consideration of Rs.1,05,17,005/-. A Builder Buyer Agreement dated 09.07.2014 was executed between the parties. It is the case of the complainants that in pursuance to that document, they started depositing various amounts against the allotted unit and paid a total sum of Rs.1,22,17,356/- . Since the booking of the allotted unit was under the construction linked plan, so as per due date of April, 2017 for offering possession, there was no progress of the project at the spot. A number of reminders asking the respondent to complete the project and hand over possession of the allotted unit were made but without any positive result. Lastly, finding no alternative, the complainants served a notice Annexure P-12 dated 20.11.2018 upon the respondent and sought refund of the amount deposited with it besides interest and compensation.

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3. But the case of the respondent as set up in the written reply is that though the complainants booked a unit in the above mentioned project under the construction linked plan but they were not regular in making payment and committed default in the same. It was denied that the project is not progressing well. In fact, the occupation certificate has been received in two other towers and the construction of tower in which the unit in question is located is at advanced stage and its possession would be offered by December, 2021. Moreover, due to the various factors, the construction of the project could not be completed. There was shortage of labour, raw-material, demonetisation and various restraint orders passed by different statutory authorities and which created an impediment in the pace of construction of the project. It was denied that the complainants are entitled for refund of the amount. Moreover, if the refund of the deposited amount is allowed, then it may hamper the progress of the project and would be detrimental to the interest of other allottees. 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 the land.

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

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

6. Some of the admitted facts of the case are that on 28.07.2012, Rahul Aggarwal, complainant booked a flat No.A-1802, measuring 1945 sq ft. in the above mentioned project of the respondent for a total sale consideration of Rs.1,05,17,005/-. He deposited different amounts with the respondent upto 14.02.2014. A Flat Buyer Agreement with regard to that unit was executed between the complainants and the respondent-builder on 09.07.2014. As

per that document, possession of the allotted unit was promised to be

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handed over by October, 2016. However, on 25.11.2014, an addendum Annexure 9 to that allotment letter was made and as per the same, the promised due date of the allotted unit was agreed upon as April, 2017. It is also a fact that unit Nos.1103 was also allotted to the complainants in the same project and which was surrendered and the amount received against that unit was transferred to the unit in question. Its approval was also conveyed to the complainants by the respondent vide email Annexure 11 dated 22.08.2017. An affidavit dated 20.11.2017 was also executed by the complainants in this regard. So, in this way, the complainants deposited Rs.1,22,70,356/- against the allotment of the unit in question with the respondent. Though the project was required to be completed by April, 2017 and its possession was to be offered to the complainants by that date but nothing materialised. The complainants waited for more than 1 ½ years. So, ultimately, they send a notice dated 20.11.2018 Annexure 12 to the respondent and sought refund of the amount deposited with it as per provision of Section 18 of Real Estate(Regulation and Development) Act, 2016. The contention of the complainants is that when they had deposited more than the amount required, then the respondent was required to complete the project and offer possession of the unit to them. The allotment of the unit in question was made under the construction linked plan and as per Annexure 2-C of FBA dated 09.07.2014, the respondent was required to offer possession of the allotted unit by October, 2016 with a grace period of six months(clause E-1). So, after the expiry of that period, they were not obligated to wait indefinitely for completion of the project and were entitled to withdraw from the project and seek refund. In cases **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, 2018(5) SCC 442** and followed by another judgement in case of Ireo Grace Real Tech Pvt Ltd.

*Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019 decided on*

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11.01.2021, it was held by the Hon'ble Apex Court of the land that a person cannot be allowed to wait indefinitely for possession of the unit allotted to him and is entitled to seek refund of amount paid by him alongwith compensation. Moreover, when the due date has already expired then, the allottee cannot be made to wait to seek refund of the amount deposited with the respondent and offer of possession. Then, Section 18 of Real Estate (Regulation and Development) Act, 2016 provides for return of the amount with interest and compensation to the allottee when the developer fails to complete the construction and give possession as per agreement of sale. So, plea of the respondent-builder that refund of the deposited amount paid against the allotted unit should not be allowed is untenable.

7. The second plea advanced on behalf of the respondent is that though there is delay in completion of the project but that is due various reasons such as demonetisation , shortage of labour and various restrain orders passed by the different statutory authorities. Moreover, the project is at an advanced stage and after completion, the possession of the allottee unit would be handed over to the complainants by December, 2021. But again the plea advanced in this regard is devoid of merit. The due date for completion of the project and handing over the possession of the allotted unit to the complainant was April, 2017, the complainant waited for more 1 ½ years and served notice Annexure P/12 upon the respondent asking to refund the amount deposited by them with it. However, nothing materialised. So ultimately, the same led to filing of the complainant on 13.11.2019 seeking refund of the amount deposited with the respondent. There may be shortage of labour, building material and some restraint orders passed by statutory authorities but the same are not sufficient for delay in completion of the project. It could have been understandable if there is delay a year or so in completion of the project. A period of four years is

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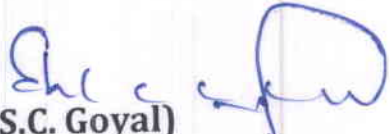
going to expire after the due date and even during the course of arguments, it is pleaded that the same would be delivered by December, 2021 and then the possession of the allotted unit would be offered to the complainants. So, all this show that the respondent has failed to complete the project and offer ~~then the~~ possession of the allotted unit to the complainants by the due date. So, in such a situation, the complainants are entitled to seek refund of the amount deposited with the respondent.

8. Thus, in view of my discussion above, the complaint filed by the complainants is hereby ordered to be accepted. Consequently, <sup>the</sup> following directions are hereby ordered to be issued:

- i) The respondent is directed to refund a sum of Rs.1,22,70,356/- to the complainants with interest @ 9.30%p.a. till the whole amount is paid;
- ii) The respondent is also directed to <sup>pay</sup> a sum of Rs.20,000/- as compensation inclusive of litigation charges to the complainants;
- iii) The above mentioned directions be complied with by the respondent within a period of 90 days and failing legal consequences would.

13. File be consigned to the Registry.

19.03.2021

  
(S.C. Goyal)  
Adjudicating Officer,  
Haryana Real Estate Regulatory Authority  
Gurugram 19-3-2021