



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. : 1334/2019

Date of Decision : 26.03.2021

Abhinav Yadav
R/o C-1/41, Safdarjung Development Area
New Delhi-110016

Complainant

V/s

M/s Supertech Ltd.
1114, 11th 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 Complainant:

For Respondent:

Shri Sushil Yadav, 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

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(hereinafter referred as the Rules of 2017) filed by Shri Abhinav Yadav seeking refund of Rs.57,40,200/- deposited with the respondent-builder for booking a residential unit No N-471C 3rd Floor, Tower-C of its project known as 'HILLTOWN', situated in Sector 2, Sohna (Gurugram) for total sale consideration of Rs.67,62,370/- 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	"HILLWON" Sector 2, Sohna(Gurugram)
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	N-471
V.	Tower No. / Block No.	Tower N
VI.	Size of the unit	1350 sq ft, 3rd floor
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)	16.10.2015
XI.	Date of Allotment(original)	-do-
XII.	Date of execution of FBA (copy of FBA enclosed)	13.01.2016

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XIII	Due date of possession as per FBA	October, 2018
XIV	Delay in handing over possession till date	About two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said FBA	Clause 26 Developer to compensate the allottee @ Rs.5/- per sq ft per month for any delay in handing over possession.
Payment details		
XVI	Total sale consideration	Rs.67,62,370/-
XVII	Total amount paid by the complainant	Rs. 57,40,200/-

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

A project known by the name of 'HillTown' situated in Sector 2, Sohna Road, Gurugram was to be developed by the respondent-builder. The complainant coming to know about that project booked the above mentioned unit with it for a total sale consideration of Rs.67,62,370/- on 16.10.2015. A Flat Buyer Agreement with regard the booked unit was executed between the parties on 13.01.2016. So, in pursuance of that he started depositing various amount and paid a total sum of Rs.57,40,200/- upto February 2018. The due date for offer of possession of the allotted unit was October, 2018 with a grace period of six months. However, to the surprise of the complainant neither there was any progress of construction at the spot nor possession of the allotted unit was going to be offered by the due date. The complainant had already paid more than 90% of the amount against the allotted unit to the respondent. When the respondent failed to

complete the project and offer possession of the allotted unit by the due

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date, then he filed a complaint seeking refund of the amount deposited with it in October, 2019.

3. But the case of the respondent-builder as set in the written reply is otherwise and wherein it was admitted that the complainant booked a residential unit with it and deposited various amounts. However, due to various factors such as shortage of labour, raw material, and various restraint orders passed by the different authorities, the construction of the project in which unit of the allotted is located could be not completed. However, every effort is being made to complete the projection and offer possession of the allotted unit to the complainant. It was denied that the project has been abandoned and the complainant is entitled to any refund as alleged. Lastly, it was pleaded that the complaint filed by the complainant is pre-mature as the matter is pending for adjudication before the 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 the complainant booked a residential unit with the respondent for a total sale consideration of Rs. 67,62,370/- in its project known as 'HillTown Officers' Enclave' and paid a total sum of Rs. 57,40,200/- upto February, 2018. A Flat Buyer Agreement was executed between the parties on 13.01.2016. A perusal of clause 26 of that document shows that possession of the allotted unit was to be delivered in October, 2018 with a grace period of six months. It is not disputed that upto now neither the project is complete nor possession of the allotted unit has been offered to the complainant. So, it is contended on behalf of the

complainant that he is entitled to seek refund of the amount deposited with
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the respondent besides interest and compensation. 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 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 allowed to wait to seek refund of the amount deposited with the respondent and offer its possession. Then, Section 18 of Real Estate (Regulation and Development) Act, 2016 provides for return of the amount with interest and compensation to an 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. Though in the later case, the Hon'ble Apex Court of the land held that after completion of the project, the possession of the allotted unit ought to be offered to the allottee and the he is obliged to take possession but in the case in hand, there is nothing on record to show that the project has been completed and possession of the allotted unit has been offered to the complainant. Though it is contended on behalf of the respondent that construction of the project is at an advanced stage but except referring to pleadings, no documentary evidence has been placed on the record. Neither any coy of quarterly progress report filed with the Hon'ble Authority has been placed on the record nor there is an affidavit of a person connected with the construction activities to show the extent and stage of construction of the project.

7. Faced with this situation, it is pleaded on behalf of the respondent that the project is registered with the Harera, Gurugram and the time for

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completion of the project has been extended. But whether that automatically extends the period of delivery of possession. The answer is in the negative. It is the duty of the respondent-builder to comply with the provisions of Section 18 of Real Estate(Regulation and Development) Act, 2016 to complete the project and hand over possession of the allotted unit to the allottee(s) The extension of period due to Covid-19 and various other reasons cannot be taken into consideration and particularly when the due date for completion of the project has already expired. So, the plea with regard to delay in completion of the project due to shortage of labour, raw-material and various other factors cannot be taken into consideration and is just a ploy to defeat the claim of the claimant seeking refund of the amount deposited with the respondent-builder. So, the plea advanced in this regard on behalf of the respondent is devoid of merit.

8. Lastly, during the course of arguments, the complainant placed on file copy of order dated 27.02.2018 passed in complaint case No.1003/2018 titled as Vasu Dev Anand and Sumit Anand Vs M/s Supertech Limited and wherein the Hon'ble Authority allowed the refund due to scrapping of the project. So, it is pleaded that when the project has already been scrapped then there is no question of its completion and offering possession of the allotted unit. Though the plea advanced in this regard is being resisted by the respondent but no document worth the name in this regard has been placed on file. So, on this score also, the complainant is also entitled to seek refund of the amount deposited with the respondent.

9. A plea already taken by the respondent that the complaint is premature and the matter is sub-judice before the Hon'ble Apex Court of the land. No doubt, the Government of Haryana amended rules framed under the Act of 2016 but the validity of the same was upheld by the Hon'ble

High Court. However, there is stay against that order passed by the Hon'ble

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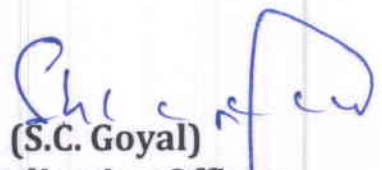
High Court by the Hon'ble Apex Court of the land. So, it shows that there is *status qua ante*. Thus, there is no bar for proceeding with the complainant seeking refund.

10. Thus, in view of my discussion above, the complaint filed by the complainant 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.57,40,200/- to the complainant with interest @ 9.30%p.a. till the whole amount is paid;
- ii) The respondent is also directed to pay a sum of Rs.20,000/- as compensation inclusive of litigation charges to the complainant;
- iii) The above mentioned directions be complied with by the respondent within a period of 90 days and failing legal consequences would.

10. File be consigned to the Registry.

26.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 26/3/2021

Judgement uploaded on 02.04.2021