



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. : 1306/2019
Date of Decision : 26.03.2021**

**Lahana Singh Saini S/o Shri Hari Kishan Lal Saini
R/o Flat No.41, Start Apartments
Sector 9, Rohini, Delhi-110085**

Complainants

V/s

**M/s Supertech Limited
1114, 11th Floor, Hemkunt Chamber,
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 Manish 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 (hereinafter referred as the Rules of 2017) filed by Shri Lahana Singh Saini seeking refund of Rs.76,50,035/- deposited by him against allotment of Unit

bearing No. E/0204, 2nd floor, Tower-E measuring 1530 sq.ft. in the project of the respondent known as 'Araville', Sector 79, Gurugram against a total sale consideration of Rs.92,77,512/- 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	"Araville" Sector 79, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	E/0204, 2 nd floor, Tower-E
V.	Tower No. / Block No.	Tower 'A'
VI	Size of the unit (super area)	Measuring 1530 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)	07.02.2013
XI	Date of Allotment(original)	-do-
XII	Date of execution of FBA	29.08.2013 -Annexure I
XIII	Due date of possession as per FBA	30.11.2015
XIV	Delay in handing over possession till date	More than 04 years

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.92,77,512/-
XVII	Total amount paid by the complainants	Rs.76,50,035/-

2. Before taking the case of the complainant, a brief reference to the fact details may be given as under.

A project known by the name of 'Araville' situated in Sector 79, Gurugram was to be developed by the respondent. The complainant coming to know about the same decided to book a unit in it on 07.02.2013 for a total sum of Rs.92,77,512/-and paid a sum of Rs.76,50,035/-to it upto 15.01.2016. A Flat Buyer Agreement dated 29.08.2013 was executed between the parties. It is the case of the complainant that after execution of Flat Buyer Agreement he started paying different amounts. The unit was booked by the complainant under the construction linked payment plan. The due date for completion of the project and handing over the possession of the allotted unit was 31.05.2015. A Tripartite Agreement Annexure 2 was also executed between the parties and the Axis Bank on 27.11.2013 and who sanctioned a sum of Rs.51,60,000/- and the same was paid to the respondent. It is also the case of the complainant that despite paying 80% of the sale consideration, the respondent failed to complete the project and hand over the possession of the allotted unit to him by due date i.e. November, 2015. Even, there was no progress of construction of the project at the site. So, in such a situation, the complainant has no option but to

withdraw from the project and seek refund of the amount to the tune of Rs.76,50,035/- deposited with the respondent.

3. But the case of the respondent as set up in the written reply is that though the complainant booked a unit in the above mentioned project but he was not regular in making payments 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 other towers and the construction of the tower in which the unit in question is located is at ^{an} advanced stage. Its possession would be offered to the complainant and other allottees by December, 2021. Moreover, shortage of labour, building material, demonetisation and orders passed by the statutory authorities created impediments in the pace of construction of the project. It was denied that the complainant is entitled to refund of the amount deposited with it. Moreover, if the refund of the 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 complainant is premature as registration of the project has been extended by the Hon'ble Authority by December, 2019.

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

5. I have heard the learned counsel for both the parties and have also gone through the case file.

6. Some of the admitted facts of the case are that on 29.09.2013, the complainant booked a flat with the respondent for a sum of Rs.92,77,512/- and paid a sum of Rs.76,50,035/- upto 15.01.2016. A Flat Buyer Agreement dated 29.08.2013 was executed between the parties. As per same, the due date of offer of possession of the allotted unit was 30.11.2015. It is case of the complainant that a Tripartite Agreement was also executed between the

parties and the Axis Bank on 27.11.2013 on the basis of which a sum of Rs. 51,60,000/- was advanced to the complainant and the same was paid by him to the respondent. So, in this way, he paid about 80% of the sale consideration of the allotted unit to the respondent. But despite paying that much amount, the respondent failed to complete the project and offer possession of the allotted unit to the complainant. So, in such a situation, he has no option but to withdraw from the project after due date and seek refund of the amount deposited with the respondent. No doubt, the allotment of the unit in question was made under the construction linked plan but the respondent was required to complete the construction and offer possession of the allotted unit by due date i.e. November, 2015. But it failed to honour its contractual obligations. So, after expiry of that period, the complainant was not obligated to wait indefinitely for completion of the project and is entitled to 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 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.

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 to various reasons

such as shortage of labour, building material, demonetisation and various restraint orders passed by statutory authorities. Moreover, the project is at an advanced stage and after completion, the possession of the allotted unit would be handed over to the complainant by December, 2021. But again the plea advanced in this regard is devoid of merit. The due for completion of the project and handing over the possession of the allotted unit to the complainant was May 2015 with a grace period of six months. The complainant waited for more than three years for completion of the project and to get possession of the allotted unit. But despite that nothing materialised. So ultimately, the same led to filing of complaint seeking refund of the amount deposited with the respondent in Jan, 2019. There may be shortage of labour, building material and various restraint orders of the statutory authorities etc. but the same are not sufficient to condone delay in completion of the project. It could have been understandable if there is delay of one year or so in completion of the project but a period of more than a 5 years is going to expire after the due date. Even, during the course of arguments, it is pleaded that construction of the project would be completed by December, 2021 and then possession of the allotted unit would be offered to the complainant. So, all this shows that the respondent failed to fulfil its contractual obligations to complete the project in time and offer possession of the allotted unit to the complainant by the due date.

8. Lastly, it is pleaded by the respondent that there was a tripartite agreement dated 27.11.2013 between the parties in dispute and the Axis Bank and on the basis of which a sum of Rs.51,60,000/- was advanced to the complainant as loan. Since that financial institution has not been made a party in the complaint, so, on this score, the complaint is liable to be dismissed. But again the plea advanced in this regard is devoid of merit. No doubt, there was a tripartite agreement between the parties at dispute and

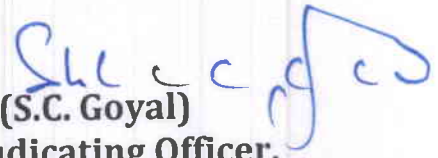
the financial institution but the loan account as detailed has already been closed. There is a copy of letter dated 07.10.2016 placed on the file which shows that the loan has already been paid and no amount is due against the loanee. So, the plea advanced in this regard is devoid of merit.

9. 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.76,50,035/- 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.30,000/- 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 follow.

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