



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

**Complaint No. : 4885/2020
Date of Decision : 07.04.2021**

**Manoj Kumar S/o Shri Subhash Chander
R/o 601/29, Street No.11, Near Geeta
Ashram, Jyoti Park, Gurugram**

Complainant

V/s

**M/s Revital 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 Complainant:
For Respondent:**

**Ms Surbhi Garg, Advocate
Sh. Bhrigu Dharma, 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

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29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Shri Manoj Kumar seeking refund of Rs.1,10,475/- deposited for booking a residential unit No.1306 Tower N 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 complainant, 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.	1306
V.	Tower No. / Block No.	T-N
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)	05.11.2018
XI	Date of Allotment(original)	02.03.2019
XII	Date of execution of BBA (copy of BBA enclosed)	

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XIII	Due date of possession as per BBA	
XIV	Delay in handing over possession till date	
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.1,10,475/-

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 complainant coming to know about the said project and in need of a house applied for it on 05.11.2018 for 2 BHK flat in the above mentioned project of the respondent by paying a sum of Rs.1,10,475/-. On being successful in the draw of lots, he was allotted a unit on 02.03.2019 against total sale consideration of Rs.22,09,500/- besides taxes etc. He paid a total sum of Rs.1,10,475/- up to November, 2018. It is the case of the complainant that the booking of the residential unit was made under the Affordable Housing Policy-2013 floated by the State of Haryana. No Builder buyer agreement was executed between the parties. Though he deposited a total sum of Rs.1,10,475/- with the respondent upto November, 2018 but moved an application for cancellation of the booked unit on 05.06.2019. Even, he also made a request for refund of the amount deposited with the respondent by sending email dated 13.09.2019 but with no positive result. So, on these

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broad averments, he filed the complaint seeking refund of the amount deposited with the respondent besides interest and compensation.

3. But the case of the respondent-builder as set up in the written reply is other wise who took a plea that the complainant booked a unit with it under the Affordable Housing Policy-2013 but cannot unilaterally withdrew from the project. It was admitted that the complainant paid a sum of Rs.1,10,475/- upto November, 2018 but was required to pay the remaining amount as and when became due. He even did not pay that amount despite a number of reminders. Moreover, the project in which the complainant was allotted a unit was to be completed by December, 2021. If he is allowed to withdraw from the project and seek refund of the deposited amount, then it would be detrimental for the completion of the project as well as to the interest of other allottees.

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 perused the case file.

6. It is an admitted that that vide letter of allotment dated 02.03.2019, the complainant was allotted the unit in question for a sum of Rs.22,09,500/- by the respondent-builder. He deposited Rs.1,10,475/- with it and the remaining amount was to be paid as per terms and conditions detailed in the allotment of allotment. However, within a period of three months, the complainant changed his mind and decided to withdraw from the project by giving an affidavit dated 05.06.2019 followed by emails dated 13.09.2019, 26.09.2019 and 27.08.2020 respectively. The plea of the respondent is that the allottee is not entitled withdraw from the project and seek cancellation of the allotted unit. But the plea advanced in this regard on behalf of the respondent is devoid of merit. The complainant applied for cancellation of

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the allotted unit within a period of three months of allotment i.e. 05.06.2019 by submitting an affidavit and stating the reasons thereof. It was followed by various emails dated 13.09.2019, 26.09.2019 and 27.08.2020 respectively. A builder buyer agreement with regard to allotted unit was not executed between the parties and the unit in question admittedly was allotted to the complainant under the Affordable Housing Policy-2013 and the same 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 with the prescribed period of 15 days. In case of surrender of flat by any successful applicant, an amount of Rs.25,000/- may be deducted by the coloniser.

A perusal of clause 5(h) 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 from the project by the allottee(s).

7. It is evident from a perusal of the above mentioned provisions under the Affordable Housing Policy-2013 issued by the State of Haryana that the complainant being found eligible was allotted the said unit on 02.03.2019. Though no BBA was executed between the parties but it is evident from the provisions detailed above that the amount of Rs.25,000/- can only be deducted by the coloniser-developer from the allottee and the same is to be treated as earnest money in the event of his withdrawal. It is not disputed that on 05.06.2019, the complainant applied for cancellation of the allotted unit and withdrew from the project. This was followed by other emails communicated to the respondents but nothing materialised. Though some of these communications were answered but without having any positive result. So, keeping in view all these facts brought on record, it is evident that the complainant was ready to forego a sum of Rs.25,000/- being the

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earnest money. Despite that the respondent was not ready to consider his request for cancellation of the allotted unit ^{and} asking him to continue his association with it. Thus, it is evident that when the complainant was entitled to seek refund as per Policy of 2013 of the State of Haryana, then the plea of the respondent that he is not entitled to seek refund of the amount deposited with it minus Rs.25,000/- towards earnest money is untenable.

8. Faced with this situation, it is pleaded on behalf of the respondent that the construction of the project is going on at a fast pace and if the complainant is allowed to withdraw from the project, then it may hamper the efforts of the respondent to complete the project and to offer the possession of allotted unit(s) to the prospective allottee(s). But the plea advanced by the respondent is devoid of merit. When there is ^a specific provision under the Affordable Housing Policy-2013 of the State of Haryana, then the respondent cannot compel the complainant to continue with the project and not to seek refund minus Rs.25,000/- as earnest money. So, the plea of the respondent in this regard is totally untenable.

9. Lastly, it is pleaded that the complaint filed by the complainant 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 complainant before this forum is no bar. So, the plea advanced in this regard on behalf of the respondent is devoid of merit.

10. Thus, in view of my discussion above, the complaint filed by the complainant is hereby ordered to be accepted. Consequently, the

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respondent is directed to refund a sum of Rs.1,10,475/- minus Rs.25,000/- (on account of earnest money) to the complainant within a period of 90 days and failing which it would be liable to pay interest @ 9.30%p.a. on that amount after that upto the date of actual realisation.

11. File be consigned to the Registry.

07.04.2021


(S.C. Goyal) 7-4-21
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 16.04.2021