



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**

Complaint No.3166/2020
Date of Decision: 05.04.2021

Gautam Prasad
R/o 235, 4th Floor, Saraswati Vihar
Near Maruti Vihar & Chakkarpur
Gurugram-122002

Complainant

Vs

M/s Revital Reality Pvt Ltd
1114, 11th Floor, Hemkunt Chambers
89, Nehru Place, New Delhi

Respondent

II

Complaint No.3167/2020
Date of Decision: 05.04.2021

Ankit Bajpai
R/o Plot Np.1268, O- Block, Geeta Nagar
Kanpur, Uttar Pradesh

Complainant

Vs

M/s Revital Reality Pvt Ltd
1114, 11th Floor, Hemkunt Chambers
89, Nehru Place, New Delhi

Respondent

Shri C. S. Goyal
5/4/2021

III

Complaint No.3220/2020
Date of Decision: 05.04.2021

Amit Bhagat & Kirti Bhagat
R/o 32, Ram Nagar, Near Gautam School
Krishna Nagar, Mathura,
Uttar Pradesh-281004

Complainants

Vs

M/s Revital Reality Pvt Ltd
1114, 11th Floor, Hemkunt Chambers
89, Nehru Place, New Delhi

Respondent

IV

Complaint No.3279/2020
Date of Decision: 05.04.2021

Amit Kumar
R/om 123, Ward No.27, Anandpuri
Khagaul, Patna, Bihar-8011105

Complainant

V

Complaint No.3318/2020)
Date of Decision: 05.04.2021

Neelam Taneja
R/o B-78, Tyagi Enclave, Gali No.1, Balaji Chowk,
Mohan Garden, Uttam Nagar, New Delhi-110059

Complainant

Vs

M/s Revital Reality Pvt Ltd
Shri c. 5/4/2021

1114, 11th Floor, Hemkunt Chambers
89, Nehru Place, New Delhi

Respondent

Complaints under Section 31
of the Real Estate(Regulation
and Development) Act, 2016

Argued by:

For Complainants- Gautam Prasad,Amit Bajpai,
Amit Bhagat & Kirti Bhagat & Neelam Taneja Sh. Sanjeev Dhingra,Advocate
For Complainant: Amit Kumar Sh Dinesh Kumar, Advocate
For Respondent: Sh. Bhrigu Dhami , Advocate

ORDER

Since common questions of fact and law are involved in all the above mentioned five matters, so the same are being disposed off by this common order.

2. The above mentioned complaints filed 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) by Gautam Prasad, Ankit Bajpai, Amit Bhagat & Kirti Bhagat, Amit Kumar and Neelam Taneja seek refund of Rs. 20,33,863/-, Rs. 20,34,062/-, Rs. 17,76,127/-, Rs. 19,35,935/- and Rs. 20,38,985/- respectively deposited by them against the total sale consideration of Rs. 19,28,500/- against the booking of residential units in the project known as "SUPERTECH BASERA" situated in Sectors 79 & 79B, Gurugram besides taxes etc on account of violation of obligations on the part of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016.

Sh. S. S. S. S.
5-4-2021

Before taking up the cases of the complainants, the reproduction of the following details is must and which are as under:

I

Project related details Complaint No.3166 of 2020		
I.	Name of the project	SUPERTECH "BASERA" situated in Sectors 79 & 79B, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	704
V.	Tower No. / Block No.	Tower 5, 7 th Floor
VI	Size of the unit (super area)	Measuring 473 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)	05.05.2015
XI	Date of provisional allotment(original)	19.09.2015
XII	Date of execution of FBA	04.12.2015
XIII	Due date of possession as per commitment made at the time of booking	
XIV	Delay in handing over possession till date	

Sh. C. S. D.
5/10/2021

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. 19,28,500/-
XVII	Total amount paid by the complainant	Rs. 20,33,863/-

II

Project related details Complaint No.3167 of 2020

I.	Name of the project	SUPERTECH BASERA" situated in Sectors 79 & 79B, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	1102
V.	Tower No. / Block No.	Tower 14, 11 th Floor
VI	Size of the unit (super area)	Measuring 473 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)	20.04.2015
XI	Date of provisional allotment(original)	19.09.2015
XII	Date of Execution of FBA	14.12.2015

She c c / 20
5 July 2021

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 ABA	

Payment details

XVI	Total sale consideration	Rs. 19,28,500/-
XVII	Total amount paid by the complainant	Rs.20,34,062/-

III

Project related details Complaint No.3220 of 2020

I.	Name of the project	SUPERTECH "BASERA" situated in Sectors 79 & 79B, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	1107
V.	Tower No. / Block No.	11 th Floor Tower 13
VI	Size of the unit (super area)	Measuring 473 sq mtr
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)	02.04.2016

*Shri C C S
5-4-2021*

XI	Date of provisional allotment(original)	13.04.2016
XII	Date of execution of FBA	27.04.2016
XIII	Due date of possession as per commitment made at the time of booking	
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. 19,28,500/-
XVII	Total amount paid by the complainants	Rs. 17,76,127/-

IV

Project related details Complaint No.3279 of 2020		
I.	Name of the project	SUPERTECH BASERA" situated in Sectors 79 & 79B, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	0001
V.	Tower No. / Block No.	Tower 6

Shri C. S. J. 4/22/21

VI	Size of the unit (super area)	Measuring 473 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)	08.03.2016
XI	Date of provisional allotment(original)	
XII	Date of execution of FBA	28.04.2016
XIII	Due date of possession as per commitment made at the time of booking	
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. 19,35,935/-
XVII	Total amount paid by the complainant	Rs. 20,38,985/-

V

Project related details Complaint No.3318 of 2020	
I.	Name of the project SUPERTECH "BASERA" situated in Sectors 79 & 79B, Gurugram
II.	Location of the project -do-

*Shri C. J. W.
5/4/2021*

III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	806
V.	Tower No. / Block No.	Tower 5, 8 th Floor
VI	Size of the unit (super area)	Measuring 473 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)	15.04.2015
XI	Date of provisional allotment(original)	19.09.2015
XII	Date of execution of FBA	27.02.2016
XIII	Due date of possession as per commitment made at the time of booking	
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. 19,28,500/-
XVII	Total amount paid by the complainant	Rs. 20,38,985/-

Handwritten signature and date: 5-11-2021

3. The brief facts of the case are under:

A project known by the name of "Supertech Basera" situated in Sector-79 and Sectors 79B, Gurugram was to be developed by the respondent under the Affordable Housing Policy-2013 floated by the State of Haryana. The complainants coming to know about the same applied for allotment of the units and being successful in the draw of lots, they were allotted units detailed above on 19.09.2015(C/2), 19.09.2015(C/2), 13.04.2016(C/2), 08.03.2016 and 19.09.2015(C/2) respectively which led to execution of Flat Buyer Agreements dated 04.12.2015 (C-3), 14.12.2015 (C-3), 27.04.2016, 28.04.2016 (CC-1) and 27.02.2016 (C-3) respectively. So, in pursuant to allotment and execution of FBA, the complainants started depositing amount and paid different amounts as detailed above. It is their case that as per terms and conditions of FBA, the construction of the project was to be completed within a period of 4 years and the possession of the allotted units was to be offered to them by that time. However, despite expiry of more than 4 years, the respondent-builder failed to complete the project and offer of possession of the allotted unit to the complainants. So, as per provisions of Section 18 of Real Estate (Regulation & Development) Act, 2016, they exercised their option and are entitled to seek refund of the amount deposited with the respondent besides interest and compensation.

4. But the case of the respondent as set up in the separate written replies is other wise and who took a plea that though the complainants deposited different amounts against the allotment of units in question but some of them committed default and did not adhere to schedule of payment as agreed upon. It was denied that the construction of the project is not going on as per the schedule. In fact, the respondent has developed a number of prestigious projects in the National Capital Region and the project in question is one of the leading one. Though the construction of the project is

Shri C. C. S. J. 4/2/21

not going on as per the required pace due to various factors such as shortage of labour, raw material and various other restraint orders passed by different statutory authorities but every effort is being made to complete the project and to handover possession of the allotted units to various allottees including the complainants. It was also pleaded that Covid-19 had devastating effect on the world wide economy. There was complete lockdown during the year 2020 and which resulted the stoppage of construction activities in the NCR area. Even, now the respondent has not been able to cope up with shortage of labour. This fact has also been acknowledged by the Government of India as well as the Hon'ble Authority, Gurugram and the later vide orders dated 26.05.2020 granted extension for a period of 6 months for the on going projects. The Ministry of Housing and Urban Affairs, Government of India has also allowed extension of 9 months vis-à-vis all licence approvals of completion dates of housing projects under construction expiring post 25.03.2020 vide its Notification dated 28.05.2020. It was also pleaded that the complaints filed by the complainants against the respondent are not maintainable and are premature.

5. All other averments made in the complaints were denied in toto.

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

7. It is not disputed that the complainants booked their units with the respondent on 19.09.2015, 19.09.2015, 13.04.2016, 08.03.2016 and 19.09.2015 respectively by depositing different amount which led to execution of FBA between the parties on 04.12.2015(C/3), 14.12.2015 (C/3), 27.04.2016, 28.04.2016 (CC-1) and 27.02.2016. The allotment of the unit to the complainants was made under the Affordable Housing Policy- 2013 and

Shri C. S. J. S.
5-4-2021

the due date for completion of the project as per Clause 3.1 would be deemed from the date of receiving Environment Clearance Certificate. Though, it is pleaded on behalf of some of the allottees that the environment clearance certificate was issued on 05.08.2015 but it is a fact on record that it was issued on 12.07.2016 by the State Environment Impact Assessment Authority. So, the due date for completion of the project would be counted from 12.07.2016 and that period as prescribed under Clause 3.1 comes to 4 years i.e. 12.07.2020. It is not disputed that in the year 2020, there was complete lockdown^{for some time} in the country resulting in stoppage of construction activities and which led to issuance of Notification dated 26.05.2020 by the Hon'ble Authority. Even, the Ministry of Housing and Urban Affairs, Government of India issued a Notification dated 28.05.2020 and wherein it was specifically provided that for all those projects whose validity has expired on or after 25.03.2020, the States may issue necessary directions to Municipal Corporation/Urban Development Authority/Urban Land Bodies so that various approvals, payment of charges and compliance by building proponent may be re-scheduled without any requirement of individual application from building proponent in this regard. This was in line with promoting Ease of Doing Business. So, in view of the notification issued by the Hon'ble Authority and the Government of India, the period of 9 months more was given for completion of the projects taking into consideration force majeure events and which comes to January, 2021. The complaints seeking refund of the amount were filed on 07.10.2020, 07.10.2020, 07.10.2020, 08.10.2020 and 09.10.2020 respectively. So, the due date for the completion of the project and offer of possession had yet to arrive at^{that time}. So, the complaints filed by the complainants seeking refund of the deposited amount are pre-mature and are not maintainable at this juncture.

Shri C. S. Srinivasulu Reddy
5-4-2021

8. Though it is also plead on behalf of the respondent that this forum has no jurisdiction to proceed with the complaints as vires of the Act, 2016 are under challenge before the Hon'ble Apex Court of the land but the plea advanced in this regard is devoid of merit. No doubt, the Hon'ble Punjab & Haryana High Court has affirmed the validity of the rules framed by the State of Haryana under the Act of 2016 but the operation of that order has been stayed by the Hon'ble Apex Court of the land. So, it means there is *status qua ante* and filing of the complaints before this forum seeking refund is not a bar. So, the plea advanced in this regard is devoid of merit.

9. Thus in view of my discussion above, there is no merit in the complaints filed by the complainants seeking refund of the amount deposited with the respondent and the same are hereby ordered to be rejected being premature. However, there would be no bar to file a fresh complaint seeking refund or other appropriate remedy under the law after the expiry of due date for completion of the project and offering possession of the allotted units to the complainants.

10. A copy of this order be placed in the respective files of the complaints.

11. Files be consigned to the Registry.

05.04.2021


(S.C. Goyal) 5-4-2021
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 16.04.2021