



**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. : 3349/2019  
Date of Decision : 18.03.2021**

**Charu Yadav W/o Shri Rajpal Singh Yadav,  
R/o A-14, Ground Floor, South City-II  
Sohna Road, Gurugram**

**Complainant**

**V/s**

**(i) M/s Supertech Limited  
B-28-29, Supertech House Sector 58,  
NOIDA**

**(ii) PNB Housing Finance Ltd.  
22, Kasturba Gandhi Marg,  
New Delhi-110001**

**Respondents**

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

**Argued by:**

**For Complainant:**

**For Respondents:**

**Shri L S Yadav, Advocate**

**Shri Brighu Dhami, Advocate for R-1**

**Shri Pankaj Chandola, Adv for R-2**

**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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29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) filed by Ms Charu Yadav seeking refund of Rs.33,21,783/- deposited with the respondent-builder against booking of unit bearing No. 2302, 23<sup>rd</sup> Floor, having a super area of 600 sq ft. in Tower-T. for a total sale consideration of Rs.35,05,003/- -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	"Supertech Azalia" Sector 68, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	2302
V.	Tower No. / Block No.	T-0
VI	Size of the unit (super area)	Measuring 600 sq ft 1 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)	15.02.2017
XI	Date of Allotment(original)	-do-
XII	Date of execution of BBA (copy of BBA enclosed)	28.02.2017

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XIII	Due date of possession as per BBA	December, 2019
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 BDA	Rs.5/- per sq ft of super area of the unit per month as per clause E(23)
<b>Payment details</b>		
XVI	Total sale consideration	Rs.35,05,003/-
XVII	Total amount paid by the complainant	Rs.33,31,783/-

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

A project known by the name of 'Supertech Azalia' situated in Sector 68, Gurugram was to be developed by the respondent-builder. So, coming to know about the project of the respondent-builder in various newspapers on 01.02.2017, the complainant booked the above mentioned unit with the respondent on 15.02.2017 for a total sale consideration of Rs.35,05,003/- and paid 10% of the total sale consideration to the tune of Rs.3,50,500/- vide Annexure PB. A Buyer Development Agreement Annexure C was executed between the parties on 28.02.2017 with regard to unit in question fixing December, 2019 as due date. The booking of the unit was made under the subvention scheme. So on 04.04.2017, the complainant applied for loan of Rs.20,00,000/- with respondent No.2 and which led to disbursement of sum of Rs. 15,00,000/- to the respondent-builder on the same day. It is the case of the complainant that she started making payments towards the allotted unit and paid a total sum of Rs.33,21,783/-. It was agreed upon between the parties that EMIs of the loan amount would be

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paid in the account of the complainant by the respondent-builder. But it did not kept its promise and committed default and cheat ed her. Even there was no progress of the project at the spot. So, in such a situation, the complainant gave a notice to the respondent on 22.02.2019 for cancellation of allotment of her unit. Though, it was a painful decision for the complainant as she belongs to middle class family but she was ready to sacrifice 15% of the amount deposited with the respondent. Despite number of oral pleas, the respondent neither offered possession of the allotted unit to the complainant nor made refund of Rs.33,21,783/- as per terms and conditions of development agreement dated 28.02.2017. So, on these broad averments, the complainant filed a complaint seeking refund of the above mentioned amount from the respondent.

3. But the case of the respondent-builder as set up in the written reply is otherwise and who took a plea that though the complainant booked a unit in its project detailed above but it was denied that she made payments against the allotted unit regularly. It was denied that there was no construction activities at the spot and which led the complainant to withdraw from the project. In fact, the construction of the project is going on at a fast speed. Due to certain circumstances beyond the control of the respondent the pace of construction could not be pick up. There were number of other factors as such shortage of labour, demonetisation and various restraint orders passed by the competent authorities resulting in slow down of the construction activities and delay in completion of the project. Moreover, the project is registered with the Harera, Gurugram and validity of its completion has been extended upto 31.12.2021. So, every effort would be made to compete the project and hand over possession of the allotted unit to the complainant.

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4. Lastly, it was pleaded that the complaint filed against the respondent is not maintainable and is premature as the validity of rules framed by the State of Haryana under the Real Estate(Regulation and Development) Act, 2016 is under challenge before the Hon'ble Apex Court of the land.

5. Respondent No.2 filed a separate written reply by taking a plea that on the basis of Tripartite Agreement dated 08.02.2017, a sum of Rs.20,00,000/- was sanctioned to the complainant against the allotted unit . A sum of Rs.15,00,000/- was disbursed on 31.03.2017 and the same was paid to the respondent-builder on a request made by the complainant. It was also pleaded that the unit allotted to the complainant was also mortgaged with the answering respondent and so, the complaint filed by the her is not maintainable .

6. I have heard the learned counsel for both the parties and who reiterated their position as stated above.

7. Some of the admitted facts of the case are that the complainant booked a unit in the above mentioned project of the respondent-builder on 15.02.2027 for a total sale consideration of Rs.35,05,003/- and also paid a total sum of Rs.33,31,783/-.The booking of that unit was made under the subvention scheme and which led to execution of a Tripartite Agreement Annexure R 2/3 between the parties to the dispute. A sum of Rs.20,00,000/- was sanctioned as loan in favour of the complainant and out of that, a sum of Rs.15,00,000/- disbursed and paid to the respondent-builder on a request made by the complainant. There was a BDA dated 28.02.2017 executed between the allottee and the respondent-builder and as per that possession of the allottee unit was to be offered to the complainant by December, 2019. It is the version of the complainant that though she has deposited more than 90% of the cost of the allotted unit with the respondent but she was astonished to see the pace

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and stage of construction. So, on 22.02.2019, she withdrew from the project by writing a letter Annexure H. While doing so, she referred to builder buyer agreement' clause 32. But despite that neither the unit allotted of the complainant was cancelled nor the respondent-builder refunded the remaining amount after deducting 15%. This letter followed by another letter dated 25.02.2019 as Annexure G. It has come on record that prior to that there was exchange of communications between the parties to dispute mentioned at Annexure H starting from December, 2018 to January 2019. But despite that nothing materialised. Neither the allotment of the unit was cancelled nor the respondent-builder acted on those communications despite the complainant withdrawing from the project and seeking refund of the amount deposited with it. So, in such a situation, the complaint filed by the complainant seeking refund of the amount deposited with the respondent-builder is maintainable and she is entitled to the refund of the deposited amount.

8. But on the other hand, it is contended on behalf of the respondent no. 2 that a tripartite agreement was entered into between the parties to the dispute for a sum of Rs. 20,00,000/-. Out of that amount, Rs. 15,00,000/- were disbursed to the complainant on 31.03.2017 and the same was paid to the respondent-builder on a request made by the former. The unit allotted to the complainant was also mortgaged with the answering respondent. So unless, the complainant pays that amount, the complaint filed by her seeking refund is not maintainable.

9. It is pleaded on behalf of the respondent-builder that the complainant booked the above-mentioned unit in its project known as Supertech Azalia but she was not a good pay master and committed default in the same. Though she paid a total sum of Rs. 33,31,783/- but it was denied that

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construction is not going at proper pace and the allotted unit is not going to be offered to the complainant shortly. Though the complainant withdrew from the project but the complaint filed by her is premature as the same is registered with the Hon'ble Authority and wherein the date for completion of the project has been extended to 30.12.2021 vide Annexure R-3. Secondly, the possession of the allotted unit is to be offered to the complainant by December, 2019 and that period has been extended to December, 2021. So, the cancellation of unit made by her is not valid as per provisions of clause 32 of Buyer Developer Agreement Annexure-C. But all the pleas taken in this regard on behalf of the respondent-builder are devoid of merit. The complainant admittedly booked a unit in its project known as Supertech Azalia situated in Sector-68 in Gurugram on 15.02.2017 vide Annexure-A by paying a sum of Rs. 3,26,500/- and Rs. 24,000/- vide different cheques on 16.02.2017 as evident from statement of account Annexure-B. She was allotted a unit bearing no. 2302, Tower-2 in the above-mentioned project for a sale consideration 35,05,003/- besides taxes etc. which led to execution of BDA Annexure-C on 28.02.2017. It is an admitted fact that complainant opted for booking under the subvention scheme and on the basis of that scheme, she was sanctioned a sum of Rs. 20,00,000/- by respondent no 2 and which led to the disbursement of sum a of Rs. 15,00,000/- in favour of the respondent-builder. So, in this way, the complainant paid a total sum of Rs.33,21,783/- to the respondent-builder upto 16.03.2018. A perusal of Buyer Developer Agreement Annexure C shows that possession of the allotted unit was to be offered to the complainant by December, 2019 with a grace period of six months. However, an option was given to the allottee for cancellation of unit and withdrawal from the project. A reference in this regard may be made to clauses 23 and 32 of the above-mentioned document

which provides as under: -

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23. The possession of the Unit shall be given by DEC, 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @ Rs. 5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure conditions and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount will be calculated after the lapse of the grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the Allottee till such date, at the time of final account settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e. No. EMI till offer of possession, Subvention scheme, Assured Return etc and who honour their agreed payment schedule and make the timely payment of due installments and additional charges as per the payment plan given in Allotment Letter.

32. That in case the Buyer(s), at any time, desires for cancellation of the allotment for any reason whatsoever, then in such case 15% of the total cost/price of the unit shall be forfeited as cancellation charges to partially make good the loss to the Developer on account of such cancellation affecting future commitments, holding cost of unit, manpower cost, reduced cash flow, project re-schedulement, increase in cost of project etc. and the balance, if any, shall be refunded without any interest in the following manner.

10. It is evident from a perusal of clause 32 of the above mentioned document that an option was given to the allottee to withdraw from the project before due date by forfeiting 15% of the total cost/price of the unit. Keeping in view that clause and before due date i.e. December, 2019, the complainant exercised that option by writing a letter dated 22.02.2019 followed by email Annexure H which may be reproduced as under:

To,

The Manager  
Supertech Ltd.  
Supertech House  
B-28-29 Sec-58 NOIDA  
Uttar Pradesh  
Pin-211307

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18/3/2021



Sub- Request letter for cancellation of Unit Booked in Supertech Azalia in the name of Charu Yadav, Unit in T2 Flat #2302.

Dear Concern,

We had booked one BHK flat in your Supertech Azalia project at sec-68, Golf course Extn. Road, Gurgaon-122101 in Gurgaon in February 2017. Our flat is booked in the name of Charu Yadav and our unit is addressed as Flat No. 2302 in Tower T2 of Project named Supertech Azalia.

Our unit cost is 3505003.00 (Thirty Five Lacs Five Thousand Three Rupees). As on 22.02.2019 we have paid the following amount.

Amount	Date	Bank (PNB LOAN)/Self
350000/-	16.02.2017	Bank (PNB LOAN)/Self
1500000/-	04.04.2017	Self
716734/-	05.04.2017	Bank
116176/-	31.05.2017	Self
250000/-	10.06.2017	Self
238373/-	16.03.2018	Bank
150000/-	16.03.2018	Self
		Bank

As on 22.02.2019 we have paid you in total 33,21,783/- (Thirty Three Lacs twenty one thousand seven hundred eighty three rupees only.)

Now seeing the speed of construction at the sight and the response of team supertech over the false promises made at the time of booking of flat we have decided to cancel our booking.

As per agreement dated 28.02.2017 between us we can cancel the allotment for any reason by sacrificing 15% of the total cost/price of the unit. (Page no. 11 of 20, Section-F point no. 32)

So we request you to please cancel our allotment and deduct your 15% charge and pay us the remaining.

I think the letter explains everything and is in the capacity of getting a prompt reply.

We would like to further share that if we will not be getting a reply to our letter in 15 days from the receipt of this letter than we will be forced to take legal course against you.

Hard copy of the same is too sent by Regd Post.

Thanks and Regards  
Charu Yadav

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22.02.2019

To,  
The Manager  
Supertech Ltd.  
Supertech House  
B-28-29  
SEC-58  
NOIDA  
Uttar Pradesh

Recd  
18/2/2021



Pin-201307

Sub- Request letter for cancellation of Unit Booked in Supertech Azalia in the name of Charu Yadav, Unit in T2 Flat #2302.

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So we request you to please cancel our allotment and deduct your 15% charge and pay us the remaining.

I think the letter explains everything and is in the capacity of getting a prompt reply. We would like to further share that if we will not be getting a reply to our letter in 15 days from the receipt of this letter than we will be forced to take legal course against you.

Cc-PNB housing finance Limited (PNBHFL)

Thanks and Regards  
Charu Yadav

12. The matter did not end there. When nothing materialised, then the complainant was forced to write another email dated 10.03.2019 for

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withdrawal from the project and seeking refund after sacrificing 15% of the total costs/price of the allotted unit. So, all these documents clearly show that the complainant opted to withdraw from the project before the due date and filed complaint seeking refund only on 8.11.2019 as there was no response from the side of the respondent. The only plea taken on behalf of the respondent is that neither the complaint is maintainable nor the complainant was entitled to withdraw from the project and seek refund of the deposited amount. But both these pleas advanced in this regard are devoid of merit. There is an agreement Annexure C dated 28.02.2017 executed between the parties to the dispute with regard to terms and conditions of allotment of unit in question, its price, time for completion of the project and giving an option to an allottee to withdraw from the project and seek refund after sacrificing 15% of the cost of the unit. The complainant/allottee exercised that option and withdrew from the project on 22.02.2019 i.e. before the expiry of due date of completion of project and sought refund of the amount deposited with the respondent-builder after sacrificing 15% of the price/cost of the unit. The respondent-builder did not bother to hear her and respond in any manner forcing her to approach this forum by way of this complaint on 08.11.2019 seeking refund of the amount deposited with it besides interest and compensation. So when the complainant is proceeding against the respondent as per the provisions of agreement Annexure-C, then it cannot be said that the complaint filed by her seeking refund is not legally maintainable. The respondent-builder also took a plea that the above-mentioned project is registered with the Hon'ble Authority and its registration has been extended up to 31.12.2021. So, the complaint filed by the complainant seeking refund prior to that date is not maintainable. But again the plea advanced in this regard is devoid of merit. There may be extension in the

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registration of the project but that does not automatically extend the period of due date as held in various judicial pronouncements.

13. Lastly, the respondent took a plea that the complaint filed by the complainant is pre-mature as the vires of rules framed by the State of Haryana are under challenge before the Apex court of the land. But again plea in this regard taken by the respondent is devoid of merit. No doubt, the State of Haryana framed certain rules under the Act of 2016 but the validity of the same was challenged before the Hon'ble High Court and who upheld the same. That order is admittedly under challenge before the Apex Court of the land and wherein the order passed by the Hon'ble High Court has been stayed. So, in such a situation, it cannot be said that the complaint filed against the respondents is not maintainable.

14. 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 against the respondent:

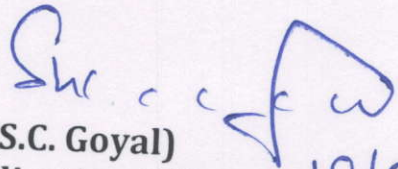
- i) The respondent-builder is directed to refund a sum of Rs.33,21,783/- minus 15% of the total sale consideration of Rs.35,05,003/- besides interest @ 9.3% p.a. w.e.f. 22.03.2019 upto (after giving a reasonable period of 30 days for acting on withdrawal from the project) the date of actual payment to the complainant.
- ii) The amount of Pre-EMIs paid by the respondent-builder in the account of the complainant, if any, would be deducted while calculating the total amount due towards her;
- iii) The loan amount received by the complainant against the allotted unit and paid to the respondent-builder would be a

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- charge payable to respondent No.2 and the same would be paid prior to paying the deposited amount to her.
- iv) There would be charge on the allotted unit bearing No.2302, Tower-T measuring 600 sq.ft. situated in the project known as 'Supetech Azalia', Sector 68, Gurugram till the whole amount detailed above is paid by the respondent-builder to respondent No.2 as well as to the complainant.
- v) The respondent-builder is further debarred from creating 3<sup>rd</sup> party rights with regard to unit in question without paying the amount detailed above;
- vi) The above mentioned directions be complied with by the respondent-builder within a period of 90 days and failing which the legal consequences would follow.
15. File be consigned to the Registry.

18.03.2021

  
(S.C. Goyal)  
Adjudicating Officer, 18/3/2021  
Haryana Real Estate Regulatory Authority  
Gurugram