



**HARERA**  
**GURUGRAM**

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभाग

गृह सिविल लाईंस मुख्यालय हरियाणा

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

Complaint No.5482/2019  
Date of Decision: 05.04.2021

Renu Bohra  
R/o V11 4 DLF City Phase-III  
Gurugram

Complainant

Vs

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

Respondent

II

Complaint No.1061/2020  
Date of Decision: 05.04.2021

Birendra Bhagat & Neeraj Aggarwal  
R/o Cosmos Executive Apartment  
Flat No. 812/B, Palam Vihar,  
Gurugram

Complainant

Vs

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

Respondent

*Sh. C. C. C. W.*  
*5 Jul 2021*

III

Complaint No.3303/2020  
Date of Decision: 05.04.2021

Saurabh Swarup  
R/o House No.13, Road no.16  
East Punjabi Bagh, New Delhi-110026

Complainant

Vs

M/s Revital Reality Pvt Ltd  
1114, 11<sup>th</sup> 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 Complainant- Ms Renu Bohra,  
For Complainants  
Birendra Bhagat & Neeraj Agarwal  
For Complainant: Saurabh Swaroop  
For Respondent:

Sh. K K Kohli, Advocate

Sh. Harshit Batra, Advocate  
Sh. Sanjeev Dhingra, Advocate  
Sh. Bhriugu Dhami, Advocate

### ORDER

Since common questions of fact and law are involved in all the above mentioned three 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

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Development) Rules, 2017 (hereinafter referred as the Rules of 2017) by Renu Bohra, Birendra Bhagat & Neeraj Agarwal & Saurabh Swaroop seek refund of Rs. 20,15,001/-, Rs. 14,94,590/- and Rs. 7,17,855/- deposited against total sale consideration of Rs. 19,28,500/- for booking of residential units under the Affordable Housing Policy-2013 floated by the State of Haryana 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. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

I

Project related details Complaint No.5482 of 2019		
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
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	1307
V.	Tower No. / Block No.	Tower 5, 13 <sup>th</sup> Floor
VI.	Size of the unit (super area)	Measuring 73 sq yds
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential

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X	Date of booking(original)	18.03.2016
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	27.04.2020
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	As per clause 3.1, Rs.5/- per sq ft per month for the period of delay
<b>Payment details</b>		
XVI	Total sale consideration	Rs. 19,28,500/-
XVII	Total amount paid by the complainant	Rs.20,15,001/-

II

<b>Project related details Complaint No.1061 of 2020</b>		
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
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	0903
V.	Tower No. / Block No.	11 <sup>th</sup> Floor Tower 13

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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)	21.04.2016
XI	Date of provisional allotment(original)	
XII	Date of execution of FBA	21.04.2016
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. 14,94,590/-

III

**Project related details Complaint No.3303 of 2020**

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

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III.	Nature of the project	Residential
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	703
V.	Tower No. / Block No.	Tower 14 7 <sup>th</sup> 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)	11.03.2016
XI	Date of provisional allotment(original)	08.04.2016
XII	Date of execution of FBA	24.05.2016
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	As per clause 3.1, Rs.5/- per sq ft per month for the period of delay
<b>Payment details</b>		
XVI	Total sale consideration	Rs. 19,35,935/-
XVII	Total amount paid by the complainant	Rs. 7,17,855/-

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3. The brief facts of the case may be detailed as under:-

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A project known by the name of "Supertech Basera" situated in Sector 78 and 79-B, Gurugram was to be developed by the respondent. The complainants coming to know about the said project applied for allotment of units under the Affordable Housing Policy-2013 of the State of Haryana. Being found successful in the draw of lots, they were allotted units detailed above on 13.04.2016, 16.03.2016 and 08.04.2016 respectively. In pursuant to allotment of the units in their favour, it led to execution of Flat Buyer Agreements dated 27.04.2016, 23.12.2015 and 24.05.2016 respectively. It is the case of the complainants that in pursuant to allotment and execution of FBA, they started depositing various amounts and paid a sum of Rs. 20,15,000/-, Rs. 14,94,590/- and Rs. 7,17,855/- upto 13.04.2019, March, 2019 and 26.03.2019 respectively against a total sale consideration of Rs. 19,28,500/-. However, the construction of the project was not going on at a proper and scheduled pace despite paying a major amount. So, they were forced to withdraw from the project on 09.05.2016 (C/8), 12.10.2018 and 26.03.2019 (C/8) respectively and sought refund of the amount deposited with the respondent. A number of reminders were also issued pointing out the slow pace of construction and the project not coming up to date. But despite that the respondent failed to refund the amount deposited with it. So, on these broad averments, they filed complaints seeking refund of the amount detailed above besides interest and compensation.

4. But the case of the respondent as set up in the separate written replies is otherwise and who took a plea that though the complainants were allotted the residential units detailed above but some of them committed default in making regular payments of the amount due and which led to slow pace of construction. However, it was pleaded that every effort is being made to complete the construction of the project and offer possession of the allotted units to the complainants. It was denied that the complainants are entitled

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to withdrew from the project. Moreover, if their plea in this regard is allowed, then it may hamper the progress of the project and which would be detrimental to the interest of other allottees. Lastly, it was pleaded that due to some unavoidable circumstances, the construction of the project could not pick up. The Central Government has also decided to help the bonafide builders to complete the stalled projects held up due to scarcity of funds. It was also pleaded that the complaints filed by the complainants are premature and the same are not maintainable.

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 files.

7. It is not disputed that under the Affordable Housing Policy-2013 floated by the State of Haryana, the respondent launched the project by the name of "Supertech Basera" in Sectors 78 and 79-B<sup>Guwaram</sup>. The applications for allotment of residential units under that Policy were invited and the complainants being found successful in the draw of lots were allotted different units detailed above for a total sale consideration of Rs. 19,28,500/-. It is a fact that after allotment of the units, the allottees entered into FBA detailed above with the respondent and started depositing various amounts. It is the case of the complainants that construction of the project was not going on at a proper speed and due to some other reasons, they could not continue with the project and decided to withdraw from the same. It is also a fact that when the complainants moved for cancellation of their booking of the allotted units, the due date for completion of the project has not yet expired. So, in such a situation whether the plea of the respondent that complainants could not be allowed to withdraw from the project is

maintainable or not.

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8. A perusal of Clauses 2.3 & 3.1 of FBA entered into between the parties makes the thing clear and which may be reproduced as under:

2.3 It is specifically agreed that an amount of Rs. 25,000/- shall be treated as Earnest Money. The earnest money shall be liable to be forfeited in the event of withdrawal of allotment by the Allottee/Buyer and/or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the Allottee/Buyer, without any interest and such refund shall be made only when the Said Flat is re-allotted/ sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/buyer.

3.1 Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs. 5.00/- (Five rupees Only) per sq. ft. of area of the Flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and

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*upto the Offer Letter of possession or actual physical possession whichever is earlier.*

9. It is evident from a perusal of the abovementioned provisions of FBA that the construction of the project was to be completed within a period of 4 years from the date of grant of environment clearance i.e. 12.07.2016 with a grace period of 6 months. However, an option was given to an allottee to withdraw from the project prior to the due date by forgoing a sum of Rs. 25,000/- as earnest money. A similar provision as Clause 2.3 is also there in the Affordable Housing Policy-2013 of the State of Haryana which provides as under: -

*It is specifically agreed that an amount of Rs.25,000/- shall be treated as Earnest Money. The earnest money shall be liable to be forfeited in the event of withdrawal of allotment of the Allottee/Buyer and/or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refund to the Allottee/Buyer, without any interest and such refund shall be made only when the said flat is re-allotted/sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/buyer.*

11. So taking into consideration the object of the policy, the terms and conditions entered into between the parties to the dispute, the claimants exercised their option and withdrew from the project. So, it cannot be said that they are not legally entitled to withdraw from the project and request for cancellation of the allotted units. Thus, the plea advanced by the respondent-builder is devoid of merit.

12. The second plea advanced on behalf of the respondent-builder is that due to *force majeure*, circumstances, it was unable to complete the project and hand over the possession of the allotted unit to the complainants. But again the plea advanced in this regard is devoid of merit. In case of **DLF**

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**Universal Ltd & Anr Vs Capital Greens Flat Buyers Association** etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020, it was observed by the Hon'ble Apex Court of the land that delay in approval of building plans and issuance of stop work orders as a result of fatal accidents during the course of construction being force majeure conditions cannot be taken into consideration in achieving timely completion of contractual obligations. Even, there was also an exit offer given to the flat buyers on two occasions by the builder and which also resulted in delay in completing the project. So all these circumstances were not considered sufficient for invoking *force majeure* conditions and resulted in payment of delayed possession charges to the allottees by the builder.

13. Lastly, the respondent took a plea that the complaints filed against it are pre-mature as the rules framed by the State of Haryana under the Act of 2016 are under challenged before the Hon'ble Apex Court of the land. But again the plea advanced in this regard is devoid of merit. No doubt, the Hon'ble Punjab & Haryana High Court affirmed the validity of the rules framed by the State of Haryana under the Act of 2016 but that order has admittedly been stayed by the Hon'ble Apex Court of the land. So, in view of that there is *status quo ante*. Thus, filing of complaints and proceedings with the same is no bar. So, the plea advanced in this regard is also devoid of merit.

15. Thus, in view of my discussion above, the complaints filed by the complainants seeking refund of the deposited amount with the respondent are hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued.

- i) To refund the entire amount of Rs.20,15,000/-, Rs.14,94,590/- and Rs.7,17,855/- minus Rs.25,000/- <sup>from each set of complaints</sup> within a period of 90 days from the date of this order failing which the respondent would be liable to pay

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interest @ 9.30% p.a. to the complainants from the expiry of 90 days' period.

16. A copy of this order be placed in the respective files of the complainants.

17. Files be consigned to the Registry.

05.04.2021

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

Judgement uploaded on 09.06.2021