

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

Complaint no. : 2403 of 2021

Date of decision : 20.08.2021

POORNIMA RAO  
R/O : H. No. 754-P,  
Sector 9 A, Gurugram

**Complainant**

Versus

M/S REVITAL REALITY PVT. LTD.  
ADDRESS: 1114, Hemunkt Chambers  
89, Nehru Place, New Delhi-110019

**Respondent**

**APPEARANCE:**

For Complainant:

Mr Sushil Yadav Adv

For Respondent:

Mr Bhrigu Dhami Adv

**ORDER**

1. Present compliant is filed by Ms. Poornima Rao (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the



Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/promoter.

2. As per complainant, on 09.04.2015, she booked flat in project "**Basera**", situated at sector-79, 79 B, Gurugram being developed by respondent under Affordable Housing Scheme of 2013. She made payment of Rs.66,602.25 as booking amount. The respondent allotted a unit admeasuring 310 sq. ft. (carpet area) for a total consideration of Rs 12,87,000/- including BSP, EDC, IDC etc. A buyer's agreement was executed on 09.03.2016.
3. As per the Clause 3.1 of buyer's agreement, the possession of the unit was proposed to be delivered by the developer to the allottee within 4 years from the date of approval of building plans or grant of environment clearance whichever is later with grace period of 6 months. In this way, the possession ought to have been delivered by 12.01.2021 but respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. As per the payment plan opted by the complainant, she made timely payment of Rs 4,99,718/- but to the utter dismay of complainant, the possession of the apartment has not been delivered in finished manner as agreed in



buyer's agreement and when she visited the site the construction work was not in progress.

5. The respondent has committed gross violation of the provisions of section 18(1) of the Act by not handing over the timely possession of the flat in question. In this way, complainant was forced to file present compliant, seeking refund of entire amount of Rs 499718/- along with prescribed rate of interest on compounded rate from the date of booking of flat, Rs 5,00,000/- towards harassment and mental agony, Rs 55,000/- towards cost of litigation.
6. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	" Basera", Sector 79, 79 B Gurugram, Haryana
2.	Project area	12.10 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	163 & 164 dated 12.09.2014 valid up to 11.09.2019
5.	Name of licensee	M/s Revital Reality Pvt. Ltd.

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6.	RERA Registration	Registration No. 108 of 2017 dated 24.08,2017
<b>UNIT DETAILS</b>		
1.	Unit no.	R034T110102, Tower 11
2.	Unit measuring	310 sq. ft. (carpet area)
3.	Date of Booking	09.04.2015
4.	Date of Buyer's Agreement	09.03.2016
5.	Due Date of Delivery of Possession As per Clause No. 9.1: The possession of the said premises is proposed to be delivered within 4 years from the date of approval of building plans or grant of environment clearance whichever is later with grace period of 6 month.	09.03.2020
6.	Environment Clearance	
7.	Delay in handing over of possession till date	
<b>PAYMENT DETAILS</b>		
8.	Total sale consideration	Rs 12,87,000/-
9.	Amount paid by the complainant	Rs 4,99,718/-



7. The respondent contested the claim by filing a reply dated 25.06.2021. It is contended that delay in offering possession is not due to any act of omission or commission on part of respondent and has been beyond the control of respondent which would be categorised as 'force majeure' circumstances. Moreover, shortage of labour, building material, demonetisation and orders passed by the statutory authorities created impediments in the pace of construction of the project and every effort is being made to complete the project and to handover possession of the allotted units to various allottees including the complainant. It was denied that the complainant is entitled to refund of the amount deposited with it.
8. 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. Due to government imposed lockdowns there has been complete stoppage on all construction activities in the NCR area till end of year 2020. 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-)-vis all licence approvals of completion dates of housing projects under construction expiring post 25.03.2020 vide its Notification dated 28.05.2020.

9. According to respondent, if the relief of refund is granted to the complainant, then it would hamper the progress of the project, which is near completion. Contending all this, respondent prayed for dismissal of compliant.
10. I have perused the entire documents on record and have heard the learned counsels for the parties.
11. It is not in dispute that the complainant was allotted a unit i.e. an apartment measuring 310 Sq. Ft. (carpet area) in project "BASERA" <sup>under 2</sup> ~~an~~ Affordable Group Housing Project. The Haryana Government through its Town and Country Planning Department issued Gazette notification on 19<sup>th</sup> August 2013 No. PF 27/48921. The Governor of Haryana has been pleased to notify a comprehensive 'Affordable Housing Policy-2013' under the provisions of Section 9 A of The Haryana Development and Regulation of Urban Areas Act, 1975 and any other corresponding statute, governing development of group housing colonies. It is a special policy, for allotment of affordable houses. The

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object to launch this policy is mentioned as "to encourage the planning and completion of "Group Housing Projects" wherein apartments of 'pre-defined size' were made available at 'pre-defined rates' within a "Targeted time-frame' as prescribed under the present policy to ensure increased supply of 'Affordable Housing' in the urban housing market, to the deserving beneficiaries".

12. Although the Real Estate (Regulation and Development) Act, 2016 came into force w.e.f 1<sup>st</sup> may, 2016. In this way, this Act came into force after aforesaid notification, even then aforesaid notification was issued for specific object as described above. While, the Real Estate (Regulation and Development) Act, 2016 is a wider act, governing development and regulation of real estates. No provision of affordable housing policy is contrary to the provisions of said act and no provision of it has been repealed by the legislature. Due to all this, in my opinion despite having been launched prior to the Act, being specific policy, it is still enforceable.

13. Clause 5 (iii) (h) of notification No. PF 27/48921 referred above states that in case of surrender of flat by any successful applicant, an amount of Rs. 25,000/- may be deducted by the coloniser. Another notification No. PF-27/15922 was issued by Haryana Govt. on July 5, 2019

Clause no. 4 (a) of this notification provides that in Clause 5 (iii)(h) of policy dated 19.08.2013, the words "*in case of surrender of flat by any successful applicant, an amount of Rs. 25000/- may be deducted by the colonizer*", shall be substituted as under:-

14. "On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following:-

Sr. no.	Particulars	Amount to be forfeited
(aa)	<i>In case of surrender of flat before commencement of project</i>	<i>Nil;</i>
(bb)	<i>Upto 1 year from the date of commencement of the project:</i>	<i>1% of the cost of flat;</i>
(cc)	<i>Upto 2 years from the date of commencement of the project:</i>	<i>3% of the cost of flat;</i>
(dd)	<i>After 2 years from the date of commencement of the project:</i>	<i>5% of the cost of flat;</i>

15. Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time."

16. It leaves no option to the colonizer but to refund the amount paid by an allottee, after deducting Rs. 25,000/- and the amount as mentioned Clause no. 4 of



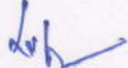
notification dated 05.07.2019, if buyer opts to withdraw his/her amount.

17. Learned counsel of complainant asserted again and again that his client simply wants to withdraw from the project and does not insist on contentions of default of respondent. In view of provisions of said policy as reproduced above, the colonizer is bound to refund the amount when buyer opts to withdraw from the project, without any condition subject to some deductions as mentioned above. I allow complaint in hands. Respondent/colonizer is directed to refund the amount already paid by the complainant, after deducting forfeitable amount as per said policy, within 90 days from today, failing which same will be liable to pay interest @ 9.30% p.a., till realization of amount.

18. Announced in open Court today i.e. 20.08.2021.

19. File be consigned to the Registry.

20.08.2021

  
(RAJENDER KUMAR)  
Adjudicating Officer  
Haryana Real Estate Regulatory Authority  
Gurugram

Judgement uploaded on 03.09.2021