

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

Complaint no. : 931 of 2021

Date of decision : 03.09.2021

VIKASH RUHIL AND SEEMA RUHIL
R/O : H.No. 278, Street 1, Bank Colony
Bhd Hardayal Public School
Bahadurgarh

Complainants

Versus

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

Respondent

APPEARANCE:

For Complainants:

K K Kohli (Adv)

For Respondent:

Brighu Dhama (Adv)

ORDER

1. This is a complaint filed by Viksh Ruhil and Seema Ruhil (also called as buyers) 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 complainants, on 31.03.2015, they jointly booked a flat in project "**Supertech Basera**", situated at sector-79, 79 B, Gurugram. The respondent vide offer of allotment letter dated 19.09.2015 allotted a unit admeasuring 546 sq. ft. for a total consideration of Rs 19,95,998 including BSP, EDC, IDC etc. A buyer's agreement dated 29.02.2016^{was} executed between parties.
 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 plan 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 complainants, they made timely payment of Rs 19,38,145 i.e. 96 % of entire agreed consideration, along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been delivered in finished manner as agreed in buyer's agreement. When they visited the site, the construction work was not in progress.

Drb

A.O.

3-9-21

5. The respondent has committed gross violation of the provisions of section 18(1) of the Act by not executing the buyers agreement and not handing over the timely possession of the flat in question. They (complainants) are forced to file present compliant, seeking refund of entire amount of Rs 19,38,145 along with interest, Rs 10,00,000 for loss or injury, Rs 10,00,000 towards harassment and mental agony, Rs 35,00,000 for loss of escalation of price, Rs 2,00,000 towards cost of litigation.
6. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Supertech 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.
6.	RERA Registration	Registration No. 108 of 2017 dated 24.08,2017
UNIT DETAILS		
1.	Unit no.	Flat No. 0807, Tower 13
2.	Unit measuring	546 sq. ft.
3.	Date of Booking	31.03.2015



4.	Offer of Allotment	19.09.2015 (Pg. No. 56)
5.	Date of Buyer's Agreement	29.02.2016
6.	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.	12.07.2020
7.	Environment Clearance	12.07.2016 (Annexure R5)
8.	Delay in handing over of possession till date	1 year 1 month
PAYMENT DETAILS		
9.	Total sale consideration	Rs 19,95,998
10.	Amount paid by the complainants	Rs 19,38,145

7. The respondent contested the claim by filing reply dated 01.07.2021 and 22.07.2021. The respondent took the preliminary objection with respect to the jurisdiction of authority or adjudicating officer on refund cases, and averred that the matter is still pending adjudication before the Apex Court. It is further averred that the delay in possession is not due

del

A.O.

3-9-21



to any act of omission or commission on part of respondent, but same was beyond the control of respondent, which can 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 complainants. It was denied that the complainants are entitled to get refund of the amount deposited with it.

8. It is further 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. The latter vide orders dated 26.05.2020 granted extension for a period of 6 months for on-going projects. The Ministry of Housing and Urban Affairs, Government of India has also allowed extension of 9 months on all licences/ approvals of completion dates of housing projects under construction expiring post 25.03.2020 vide its Notification dated 28.05.2020. the project has been registered with RERA and as per RERA registration certificate , the respondent has undertook to complete the project by June 2022.
9. According to respondent, if the relief of refund is granted to the complainants, then it would hamper the progress of the project,

h
A.O.
3-9-21

which is near completion. Contending all this, respondent prayed for dismissal of complaint.

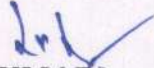
10. It is not in dispute that the complainants were allotted a unit i.e. an apartment measuring 473 Sq. Ft. (carpet area) in project "BASERA" an Affordable Group Housing Project.
11. The respondent had agreed to hand over possession of booked unit within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. Even, according to respondent, the environment clearance of the project was received from competent authority on 12.07.2016, in this way, due date of handing over possession comes to 12.07.2020.
12. This forum cannot ignore of the fact that COVID-19 showed its effect in India after March 2020. Even the Government was forced to impose lockdown for some time with effect from 23.03.2020. In this way, the respondent was entitled to have some relaxation. According to complainants, the project or unit in question is nowhere near completion. Construction work is in initial stage. Despite being asked, learned counsel for respondent could not clarify the stage of construction or even the likely date of handing over possession of unit in question to the complainants. It is submitted that construction work is in progress and possession will be handed over to the complainants whenever the unit is complete. This is very vague reply. It is well settled that a buyer cannot be made to wait for

indefinite period to get possession of his/her dream house considering the fact even respondent is not in a position to tell tentative date as when the of unit in question will be ready for handing over possession to the buyers i.e. complainants.

13. Complaint in hands is allowed and respondent is directed to refund the amount received from complainants i.e. Rs 19,38,145 within 90 days from today alongwith interest @ 9.30% per annum from the date of receipt of payment till its realization. The respondent is also burdened with cost of Rs. 50,000/- to be paid to the complainants.

File be consigned to the registry.

03.09.2021


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

Judgement uploaded on 11.09.2021.

HARERA
GURUGRAM