



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

**Complaint No. : 4776/2020
Date of Decision : 14.09.2021**

**Shri Manan Sanjeev
R/o House No. A/170, IInd Floor
Today Blossoms-I, Sector-47
Gurugram-122018**

Complainant

V/s

**M/s Revital Reality Pvt Limited
1114, 11th Floor, Hemkunt Chamber
89, Nehru Place, New Delhi-110019**

Respondent

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

Argued by:

For Complainant:

For Respondent:

Shri Sanjeev Sharma, Advocate

Shri Brighu Dhami, Advocate

ORDER

This complaint is filed by Shri Manan Sanjeev (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, he booked a flat in project "Basera", situated at sector-79, 79 B, Gurugram, being developed by respondent under

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Affordable Housing Scheme of 2013. Till date, he has paid Rs.16,94,509/- to the respondent, against total sale consideration of Rs.19,28,500/- including BSP, EDC, IDC etc. The respondent allotted a unit bearing No.1201, Tower No.15 admeasuring 473 sq. ft. (super area) A buyer's agreement was executed on 30.04.2016.

3. ^{According to} ~~As per~~ Clause 3.1 of buyer's agreement, the possession of unit was proposed to be delivered by the developer 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. Environment clearance was received on 12.07.2016. In this way, possession was to be offered by the respondent by 30.10.2020.

4. As per the payment plan opted by the complainant, he made timely payments 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. When he(complainant) visited the site of construction, work was not in progress.

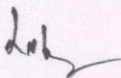
5. The respondent has committed gross violation of the provisions of section 18(1) of the Act by not handing over timely possession of the flat in question. In this way, complainant was forced to file present compliant, seeking refund of entire amount of Rs 16,94,509/- along with prescribed rate of interest as per RERA from the date of booking of flat. In addition to this, the complainant has sought Rs 5,00,000/- towards compensation for mental harassment and agony, 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		
	Project name and location	" Basera", Sector 79, 79 B Gurugram, Haryana

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	Project area	
	Nature of the project	Residential Colony
	DTCP license no. and validity status	
	Name of licensee	M/s Revital Reality Pvt. Ltd.
	RERA Registration	
UNIT DETAILS		
	Unit no.	R034T151201, Tower 15
	Unit measuring	473sq. ft. (super area)+73 sq ft for balcony area
	Date of Booking	16.03.2016
	Date of Buyer's Agreement	30.04.2016
	Due Date of Delivery of Possession As per Clause No. 3.6, 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.	30.10.2020
	Environment Clearance	12.07.2016
	Delay in handing over of possession till date	About a 1 year
PAYMENT DETAILS		
	Total sale consideration	Rs 19,28,500/-


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	Amount paid by the complainant	Rs 16,94,509/-
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7. The respondent contested the claim by filing a reply dated 05.07.2021. It is contended that delay in offering possession is not due to any act of omission or commission on part of respondent but occurred due to circumstances beyond its control, 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. Every effort is being made to complete the project and to handover possession of the allotted units to various allottees including the complainant. It is denied that the complainant is entitled for 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, it resulted in stoppage of construction activities in the NCR area. This fact has also been acknowledged by the Government of India as well as the Hon'ble Authority, Gurugram. The latter vide order 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 for 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 complaint.

10. I have heard learned counsel for parties and perused documents on record.

11. Admittedly, project in question has been developed under Affordable Housing Scheme-2013. The Haryana Government through its Town and Country Planning Department issued Gazette notification on 19th 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 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 1st 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:-

"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>	Nil;
(bb)	<i>Upto 1 year from the date of commencement of the project:</i>	1% of the cost of flat;

14. As is clear from the complaint, the complainant claims refund of the amount contending that respondent failed to deliver possession of unit in question in time as agreed through buyer's agreement. The same does not want refund of the amount after deduction of Rs. 25,000/- or deduction as per notifications referred above. The same is claiming the relief in view of section 18 of the Act i.e. for reasons of failure of respondent/developer to handover possession in time.

15. It is not in dispute that the complainant was allotted a unit i.e. an apartment measuring 473 Sq. Ft. (super area) in project "BASERA" under Affordable Group Housing Project. Total sale consideration was agreed as Rs. 19,28,500/- out of which same has paid Rs. 16,94,509/-. A Buyer agreement was entered between the parties on 30.04.2016. According to complainant, date of possession even according to buyer's agreement comes out as 30.10.2020. While according to respondent, the date for delivery of possession as stipulated in the agreement was

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31.01.2021. ~~According to~~ Clause 3.1 of buyer's agreement, ^{says that} possession was proposed to be delivered by the developer within four years from the date of approval of building plans or grant of environment clearance, whichever is later, with grace period of six months. All this is referred by complainant also, in his complaint. Environment clearance for project in question was received on 12.06.2016. Counting in this way, and by adding six months of grace period, due date comes out to be 31.01.2021.

16. As per record, complaint in hands was filed on 24.12.2020 i.e. even before due date of possession. As per respondent, due to force majeure circumstances i.e. Covid-19 delay in completion of construction work and handing over possession of unit in question has been delayed.

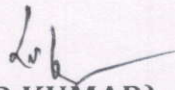
17. Learned counsel for respondent referred advisory for extension of time limit for all approvals/NOC etc. issued by the Government of India date 28.05.2020 also reminded the directions given by this Authority for extension of such time.

18. In this way, even if completion of project is delayed to some extent, the respondent has reasons to explain delay. I find weight in contention of learned counsel for respondent, saying that if refund in such way is allowed, same may hamper entire project and is not proper to allow refund.

19. Complaint in hands is thus dismissed. Parties to bear their own costs.

20. File be consigned to the Registry.

14.09.2021


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

Judgement uploaded on 25.09.2021.