

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

Complaint no. : 1134 of 2021

Date of decision : 20.09.2021

POOJA SIKRI
R/O : Flat No. E 200,
Room No. 6, Sushant Lok-1,
Sector-52 A, Gurugram,
Haryana- 122002

Complainant

Versus

REVITAL REALITY PRIVATE LIMITED
ADDRESS : 1114, First Floor,
Hemkunt Chamber, 89,
Nehru Place, New Delhi-110019

Respondent

APPEARANCE:

For Complainants:
For Respondent:

Complainant in person
Brighu Dhama (Adv)

ORDER

1. This is a complaint filed by Pooja Sikri (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 respondents/developer.

2. As per complainant, on 29.11.2018, she booked a flat in affordable group housing residential floor type project **The Valley** situated at sector-78 Gurugram and paid Rs 1,10,475 as booking amount. The respondent issued offer of allotment letter dated 02.03.2019 and allotted a unit No. J- 902, admeasuring 639 sq. ft. for a total consideration of Rs 22,09,500 including BSP, PLC and EDC, etc.
3. The complainant approached PNB HFL and L & T housing finance ltd for loan. Both initially approved the loan application but after sanction of loan, denied to disburse the loan amount due to bad reputation of respondent in market. The complainant has paid the loan processing fees to both the financial institution but none disbursed the loan amount. She (complainant) approached the respondent many times to resolve this issue but till date, there has been no satisfactory response, from the side of respondent.
4. The complainant has paid Rs 1,10,475 as and when demanded by respondent, which is duly acknowledged by the latter, In this way, she (complainant) had no other option, except to cancel the booking. She sought refund of amount paid by her (complainant).

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5. The respondent has committed gross violation of the provisions of section 18(1) of the Act, and hence present complaint, seeking refund of entire amount of Rs 1,10,475, along with interest at prescribed rate as per Act of 2016 and Rs 50,000 towards cost of litigation.
6. The particulars of the project, in tabular form are reproduced by complainant as under:

S.No	Heads	Information
PROJECT DETAILS		
1.	Project name	Supertech The Valley
2.	Project Location	Sector 78, Gurugram
3.	Nature of Project	Affordable Group Housing
4.	DTCP License No.	45 of 2018 valid upto 28.06.2023
5.	Area of Project	9.0625 acres
6.	Name of License holder	Revital Reality Pvt. Ltd. Kanwar Singh Surat Singh Satbir
7.	HRERA Registration	Registered vide registration no. 20 of 2018
UNIT DETAILS		
1.	Unit no.	J-902
2.	Unit measuring	639 sq. ft.
3.	Date of Booking	29.11.2018

4.	Date of Offer of Allotment Letter	02.03.2019
5.	Date of Buyer's Agreement	Not Annexed
PAYMENT DETAILS		
6.	Total sale consideration	Rs 22,09,500
7.	Amount paid by the complainants	Rs 1,10,475

7. Respondent contested the claim by filing written reply. It is averred that complainant has executed a buyer's agreement. She is liable to make payments, according to payment plan and as per agreement. The project was to be completed within four years from the date of approval of building plan or grant of environment certificate, whichever is later. The environment certificate of project was received on 29.07.2019, however the date of delivery of possession is to be extended due to covid 19 and other force majeure events. Moreover, the delivery of possession of allotted unit is subject o payment of all dues by the complainant.

8. It is averred that as per Affordable Housing Scheme 2013 in Haryana, an allottee may ask for refund at nay time and same shall be complied with in terms of said scheme which allows for a deduction of Rs 25,000 + 1 % of total amount of every year.

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Accordingly, as per scheme, Rs 47,095 is to be deducted from the amount paid by the complainant and complainant is eligible to get refund of RS 64,485/-and respondent is willing to refund the same in terms of the agreement.

9. Contending all this respondent prayed for dismissal of complaint.

10. Heard. It is not in dispute that complainant was allotted a unit no. J-902 admeasuring 639 sq. ft. in project **The Valley** an Affordable Group Housing Project 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".

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11. 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.

12. 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:-

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

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."

13. 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.

14. Plea taken by complainant is that she could not get the loan sanctioned from any financial institution, due to bad reputation of respondent and she was unable to pay any more amount without loan. Although the complainant has blamed respondent for not fulfilling its promise to facilitate the loan for her and also the allegation that respondent had bad reputation due to which financial institutions did not disburse loan to her. There is nothing on record to show that respondent had undertaken to facilitate loan to the complainant.

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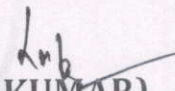


15. Complainant asserted again and again ^{during arguments} that she simply wants to withdraw from the project and does not insist on contentions of default of respondent. In view of provisions of said policy as reproduced above, the colonizer is bound to refund the amount, when buyer opts to withdraw from the project, without any condition subject to some deductions as mentioned above.

16. I allow complaint in hands. Respondent is directed to refund the amount already paid by the complainant, after deducting forfeitable amount as per said policy, within 90 days from today, falling which, same will be liable to pay interest @ 9.30% p.a., till realization of amount.

File be consigned to the Registry.

20.09.2021


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

Judgement uploaded on 25.09.2021.