

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

Complaint no. : 4988 of 2020

Date of decision : 10.11.2021

DIVYAM JANGID
R/O : H.No. 206,
Vishwakarma Colony
Bal Samand Road Hisar,
Haryana

Complainant

Versus

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

Respondent

APPEARANCE:

For Complainants:
For Respondent:

Mr. V.K. Bansal Advocate
Brighu Dhami Advocate

ORDER

1. This is a complaint filed by Divyam Jangid (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/developer.
2. As per complainant, on 16.11.2018, he booked a flat in affordable group housing residential floor type project **The Valley** situated at sector-78 Gurugram and paid Rs 1,15,000 as booking amount. The respondent issued an offer of allotment letter dated 27.02.2019 and allotted a unit No. J-205, admeasuring 636 sq. ft. for a total consideration of Rs 23,16,500 including BSP, PLC and EDC, etc. He (complainant) has paid Rs 9,20,836 as per payment plan opted by the him and as per demand raised by the respondent. No buyer's agreement has been executed by respondent till date.
 3. He (complainant) opted for cancellation of unit due to his personal reasons, and sent intimation of cancellation to respondent vide affidavit dated 09.09.2020. The latter failed to initiate cancellation process and failed to refund amount paid by him (complainant) with 10 % interest.
 4. As respondent has failed to refund the amount, despite request by him (complainant), the latter is, forced to file present complaint, seeking refund of entire amount paid by him i.e. Rs 9,20,836/- along with interest @ 10 % p.a., Rs 10 lacs towards compensation and Rs 1,00,000 towards cost of litigation.
 5. The particulars of the project, in tabular form are reproduced as under:

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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- 205
2.	Unit measuring	636 sq. ft.
3.	Date of Booking	16.11.2018
4.	Date of Offer of Allotment Letter	27.02.2019
5.	Date of Buyer's Agreement	Not executed
PAYMENT DETAILS		
6.	Total sale consideration	Rs 23,16,500/-

Ans



7. Amount paid by the complainant	Rs 9,20,836/-
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6. Respondent contested the claim by filing written reply. All averments of complaint are vehemently denied. It is contended that it (respondent) has complied with all statutory norms and clearances, pertaining to environmental clearance, the last of which was issued to the respondent on 29.07.2019. As per statutory scheme, envisaged under RERA, it is bound to provide possession of flats within 04 years once the environmental and statutory clearances are approved by respective authorities which comes to be 28.07.2023. Construction work at the project site is in full swing and substantial construction has been completed. The project will be completed within time as envisaged under RERA. The complainant cannot unilaterally withdraw from the affordable housing project, at this stage.

7. It is further the case of respondent, the complainant had entered into buyer's agreement dated 27.02.2019, which included a clause for force majeure for delay in project, which is beyond the control of respondent. As per clause 8.1.2 of buyer's agreement it has been agreed between parties that if project is delayed due to any conditions as stipulated and defined under the force majeure clause, the respondent shall be entitled to the extension of time for delivery of possession of the apartment. Covid-19 had devastating effect which resulted into complete



standstill of construction activities, due to imposition of lockdown by central government on 21.03.2020. In its office memorandum dated 26.05.2020 HRERA, Gurugram, acknowledged Covid-19 as natural calamity invoking force majeure clause pertaining to the same. The real estate sector is primarily dependent on its labour force and due to lockdown, there has been complete shortage of labour.

8. The Supreme Court of India vide its order dated 04.11.2019, imposed a blanket stay on all construction activities in Delhi-NCR region. Similar stay orders were passed in the preceding years i.e. 2017-2018, 2018-19 which resulted into complete ban on construction activity at site. Graded Response Action Plan targeting key sources of pollution has been implemented during winters of 2017-18 and 2018-19. As per provisions of RERA, every allottee is responsible to make necessary payments in manner, as specified in agreement for sale.

9. Moreover, complainant himself has admitted that he wants to cancel the booking due to his own personal reasons and not on account of any deficiency in service or delay on the part of respondent. The cancellation of booking is governed by the clause 8.1.4 read with 8.1.5 of the agreement and respondent is entitled to forfeit the forfeitable amount as per the terms of agreement. The grant of refund at such later stage will have adverse effect on the progress of project and interest of other allottees.



10. Contending all this respondent prayed for dismissal of complaint
11. It is not in dispute that complainant was allotted a unit no. J-205 admeasuring 636 sq. ft. in project **The Valley** an Affordable Group Housing Project. A copy of allotment letter has been put on file as Annex. IV. 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)	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;

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(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."

14. It leaves no option to the ^{developer} 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.

15. Learned counsel of complainant submitted 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. The respondent did not refund the amount of complainant, despite latter's request in this regard, sent through letter/affidavit dated 09.09.2020.

16. Respondent in para 6 (G) of its written reply has stated that as per statutory scheme, same was bound to offer possession of flats within four years, once the environmental and statutory clearances are received. The due date of possession ^{as per respondent} comes to 28.07.2023. There is no evidence to show that respondent had

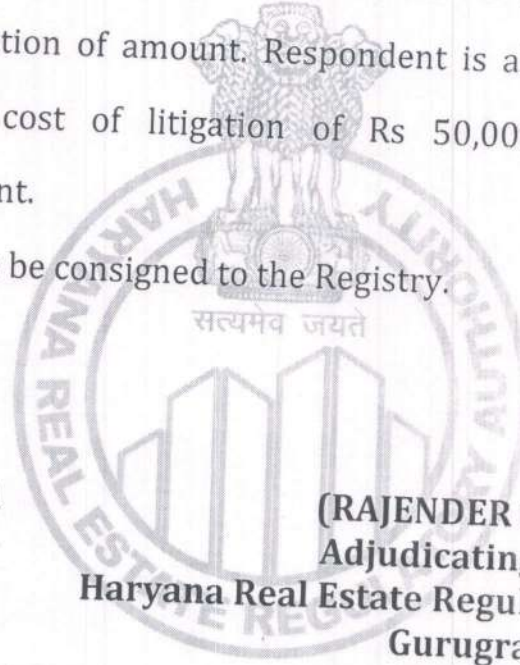


started raising construction of project, till the date, complainant opted to withdraw from it. In such circumstances, respondent cannot forfeit amount except Rs 25,000 as described above.

17. I allow complaint in hands. Respondent is directed to refund the amount already received from the complainant, after deducting forfeitable amount as per said policy i.e. Rs 25,000, within 90 days from today, along with interest @ 9.3 % from 09.09.2020 till realization of amount. Respondent is also burdened with litigation cost of litigation of Rs 50,000 to be paid to complainant.

File be consigned to the Registry.

10.11.2021



(RAJENDER KUMAR)
Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 27.11.2021.