

<b>PROCEEDINGS OF THE DAY</b>		<b>11</b>
Day and Date	Thursday and 13.04.2023	
Complaint No.	CR/5172/2019 Case titled as VIBHU AGARWAL Vs BESTECH INDIA PRIVATE LIMITED	
Complainant	VIBHU AGARWAL	
Represented through	Col. M.S. Sehrawat Advocate	
Respondent	BESTECH INDIA PRIVATE LIMITED	
Respondent Represented	Shri Ishaan Dang Advocate	
Last date of hearing	17.03.2023	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### Proceedings

The present complaint was filed on 27.11.2019 and the reply on behalf of respondent has been received on 31.01.2020.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	Particulars	Details
1.	Name of the project	"Park View Sanskruti", Sector- 92, Gurugram.
2.	Project area	12.7875 acres
3.	Nature of the project	Residential group housing
4.	DTCP license no. and validity status	i. 13 of 2009 dated 21.05.2009 valid up to 20.05.2024 ii. 43 of 2011 dated 13.05.2011 valid up to 12.05.2024
5.	Name of licensee	Spring Water Properties Pvt. Ltd. and others



**HARERA**  
GURUGRAM

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/ST/2019

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

6.	RERA Registered/ registered	not	Not Registered
7.	Unit no.		A-601, 6 <sup>th</sup> floor, Tower/block- A (Page no. 38 of the complaint)
8.	Unit area admeasuring		2120 sq. ft. (Super area) (Page no. 38 of the complaint)
9.	Allotment letter		N. A
10.	Date of execution of agreement to sell	of	Not executed
11.	Date of execution of booking application form		Annexed but not executed
12.	Possession clause		<b>12. COMPLETION OF CONSTRUCTION/ DELIVERY OF POSSESSION</b> i. The possession of the said apartment is proposed to be offered by the company to the Applicant(s)/intending Allottee(s) within <b>36 months</b> <b>(excluding a period of 6 months)</b> <b>from the date of approval of the</b> <b>building plan or date of execution of</b> <b>buyer's agreement whichever is</b> <b>later.</b> (Page no. 41 of the complaint)
13.	Grace period		<b>Grace period of 6 months allowed</b> <b>being unqualified.</b>
14.	Approval of building plans		04.05.2013
15.	Due date of possession		04.11.2017 (Note: - 36 months from date of agreement (not executed) or the date of

		building plans (04.05.2013) whichever is later + 6 months grace period)
16.	Basic sale consideration as per payment plan at page no. 38 of the complaint	Rs.1,42,70,080/-
17.	Amount paid by the complainant	Rs.10,00,000/- [Page no. 32 of the complaint]
18.	Occupation certificate /Completion certificate	21.12.2021
19.	Offer of possession	Not offered
20.	Surrender by the allottee	31.08.2013 [Page no. 47 of the complaint]
21.	Date of cancellation letter	17.09.2013 [Page no. 49 of the complaint]

The complainant is seeking the following relief:

**1. Direct the respondent to refund Rs. 10 Lakhs along with interest.**

The complainant was allotted unit no. A-601 on 6<sup>th</sup> floor, in tower/block- A, in the project "Park View Sanskruti" by the respondent/builder for a total consideration of Rs.1,42,70,080/- and he has paid an amount of Rs.10,00,000/- in the year 2012. Further, the complainant wrote an email to the respondent on 17.09.2013, and even requested withdrawal/surrender of the allotment of the said unit due to the harsh circumstances at him on page no. 49 of the complaint which is reproduce as under for ready reference: -

*"This is in reference to a discussion I have had with you regarding cancellation of booking for flat in Bestech Sanskruti, as discussed, my mother has to get both her knee changed and being highly diabolic and having Blood Pressure the same is very expensive and difficult for which I need funds most urgently, hence I request to you kindly get*

*the flat cancelled and arranged to get a cheque of Rs.10 Lakhs given to you."*

The counsel for the complainant further draws attention of the authority towards an email dated 31.07.2013 (page 46) vide which the channel partner had issued NoC after processing the cancellation request. Subsequently no refund was made and hence, the complainant approached the Permanent Lok Adalat, Gurugram in 2016 itself by filing an application No.1786/2016 and vide order dated 04.09.2019, the present petition was dismissed as withdrawn with liberty to agitate the present matter in dispute before appropriate forum or authority including HRERA and hence the above complaint therefore, the complaint is not barred by limitation and claim still subsists.

However, the counsel for the respondent states that complaint is barred by limitation as the period for which the matter remains pending in Hon'ble Permanent Lok Adalat, Gurugram cannot be excluded as the matter was before the court which has proper jurisdiction and requests for placing on record citation in this regard. However the counsel for the complainant submits that the case before Permanent Lok Adalat, Gurugram was withdrawn on specific liberty to file the complaint before RERA and hence is not barred by limitation. The counsel for the respondent further states that the complainant has deposited only Rs.10 Lakhs against a booking amount of Rs.19,28,498/- and a total consideration of Rs.1,42,70,080/-. The counsel for the complainant states that neither any allotment letter was issued nor BBA has been executed as booking was made through a channel partner who is not a party in the above complaint.

Arguments heard.

Both the counsels may submit written submissions within 2 weeks after supplying a copy to each other.

Order reserved.

Detailed order will follow. Matter stands disposed off.

V.1-3  
Vijay Kumar Goyal  
Member  
13.04.2023