



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

PROCEEDINGS OF THE DAY

11

Day and Date	Thursday and 27.07.2023
Complaint No.	CR/7368/2022 Case titled as Priyanka Kataria Vs Revital Reality Private Limited
Complainant	Priyanka Kataria
Represented through	Shri Gaurav Rawat Advocate
Respondent	Revital Reality Private Limited
Respondent Represented through	Shri Bhrigu Dhami Advocate
Last date of hearing	31.01.2023
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint was received on 06.12.2022 and the reply on behalf of respondent was received on 12.07.2023.

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

S.N.	Particulars	Details
1.	Name of the project	"Supertech Basera" sector- 79&79B, Gurugram
2.	Project area	12.10 area
3.	Nature of project	Affordable Group Housing Project
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017
5.	RERA registration valid upto	31.01.2020
6.	RERA extension no.	14 of 2020 dated 22.06.2020
7.	RERA extension valid upto	31.01.2021



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CR/1366/2022

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8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	
9.	Date of approval of building plans	19.12.2014	
10.	Date of grant of environment clearance	22.01.2016	
11.	Unit no.	0910, 9 th floor, tower/block- 2,	
12.	Unit measuring	473 sq. ft.	73 sq. ft.
		(Carpet area)	(Balcony area)
13.	Allotment letter	31.03.2016	
14.	Date of execution of flat buyer's agreement	30.04.2016	
15.	Possession clause	3.1 Possession <i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges,</i>	



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		<i>the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date") , whichever is later.</i>
16.	Grace period	Not allowed
17.	Due date of possession	22.01.2020
18.	Total sale consideration	Rs.19,28,500/- (Page 39 of the complaint).
19.	Total amount paid by the complainant	Rs.20,12,569/- (As per statement of payment at page no. 33 of the complaint) Rs.20,33,758/- Minus Rs.21,189/- which is added in the account statement in lieu of ITC profit and has not been actually paid.
20.	Occupation certificate	Not applied and not obtained
21.	Delay in handing over possession till the date of order i.e., 27.07.2023	3 years 6 months and 5 days

The complainant has sought following relief:

- 1. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of FBA.**



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The respondent is legally bound to meet the prerequisites for obtaining occupation certificate from the competent authority. It is unsatiated that even after the lapse of more than 3.6 years from the due date of possession the respondent has failed to apply for OC to the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC.

- 2. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the provisions of the Act from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the respondent in spite of the fact that the complainants desires to take the possession.**

Considering the above-mentioned facts, the authority calculated due date of possession as per clause 3.1 of the flat buyer's agreement i.e., 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "**Commencement Date**"), whichever is later which comes out to be 22.01.2022. It is pertinent to mention over here that even after a passage of more than 3.6 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. The counsel for the respondent requests for allowing 6 months grace period in terms of possession clause 3.1 of BBA which has not been challenged by the complainant. However, the counsel for the complainant states that clause is beyond the purview of Affordable Housing Policy and has been incorporated by using the predominant position by the builder and has challenged such arbitrary clause in the complaint by putting the order passed by the Hon'ble NCDRC in case of Shri Satish Kumar Pandey vs. Unitech and Neel Kamal Realtors versus Union of India. In view of specific provisions of Affordable Housing Policy, the project is required to be essentially completed within 4 years of grant of EC or approval of building plans whichever is later



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and the policy does not stipulate such conditions of grace period which are beyond the policy and hence not allowed. Similarly, the relief of Covid period cannot be allowed as due date of possession comes out 22.01.2020 and before the occurrence of Covid and hence, the respondent cannot be allowed leniency on the basis of its own wrong.

The authority allows DPC at the prescribed rate of interest and it has been prescribed under rule 15 of the rules. Consequently, as per website of the State Bank of India i.e., , the marginal cost of lending rate (in short, MCLR) as on date i.e., 27.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.

V.1-3
Vijay Kumar Goyal
Member
27.07.2023