

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

Complaint no. : 2222 of 2021

Date of decision : 24.08.2021

SUMITA MISHRA SINGH
AND PARAMJEET SINGH
R/O : H. No. 133, Sector-24 A,
Chandigarh, Punjab- 160023

Complainants

Versus

M/S SUPERTECH LIMITED
ADDRESS: 1114, 11th Floor,
Hemkunt Chamber, 89,
Nehru Place, New Delhi-110019

Respondent

APPEARANCE:

For Complainant:

Mr Harshit Batra Adv

For Respondents:

Mr Brighu Dhami, Adv

ORDER

1. This is a complaint filed by Smt. Sumita Misra Singh and Sh. Paramjeet Singh (also called as buyers) 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 complainants, they jointly booked a flat in respondent's project **Supertech Hues**, situated at sector-68, Gurugram on 10.09.2015 and made payment of Rs 5,04,840 as booking amount. The respondent allotted an apartment i.e. flat No.0804, Tower-K admeasuring 1180 sq. ft. on 8th floor for a total consideration of Rs 98,83,000/- including BSP, EDC, IDC etc, under subvention scheme.
3. A buyer's agreement was executed between them on 24.10.2015 incorporating their respective obligations in respect of the said transactions.
4. As per the Clause E. 24 of buyer's agreement, the possession of the said premisses was to be delivered by the respondent/developer by July 2018 or extended period as permitted by agreement but respondent failed to complete the construction work and consequently failed to deliver the same till date.
5. The complainants took house loan of Rs 75,00,000/- and a home equity loan of Rs 1,05,239/- from the India Bulls Housing Finance Limited (IHFL) under subvention scheme.
6. The respondent had executed a MOU dated 26.10.2015 whereby complainants had opted for no pre-EMI scheme. The respondent had also entered into tripartite agreement with



the IHFL and the complainants. As per the terms of the no pre-EMI scheme, the obligation to pay the pre-EMI for the subvention period was upon the respondent. The latter defaulted in its obligation of payment of EMI, which resulted into tremendous financial burden upon the complainants.

7. As per the payment plan opted by the complainants, the latters made payment of Rs 13,95,291, but to their utter dismay the possession of apartment has not been delivered, in finished manner as agreed in buyer's agreement.

8. 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. The complainants have filed present compliant, seeking refund of entire amount of Rs 13,95,291/- alongwith interest at prescribed rate and Rs 5,00,000 for harassment and mental agony and Rs 1,00,000 as litigation charges.

9. The particulars of the project, and details of sale consideration, etc are reproduced hereunder in tabular form:

| S.No. | Heads | Information |
|------------------------|---------------------------|--|
| PROJECT DETAILS | | |
| 1. | Project name and location | " Supertech Hues", Sector 68, Gurugram, |
| 2. | Project area | 13.743 acres |

✓

A.O.

24-8-2021



| | | |
|----|--------------------------------------|---|
| 3. | Nature of the project | Residential Group Housing Colony |
| 4. | DTCP license no. and validity status | 106 & 107 of 2013 dated 26.12.2013 valid up to 18.03.2018 |
| 5. | Name of licensee | Sarv Realtors Pvt. Ltd |
| 6. | RERA Registered/ not registered | Registered |

UNIT DETAILS

| | | |
|----|---|---|
| 1. | Unit no. | R0380K00804 Flat No. 0804 (Pg. No 18 of complaint) |
| 2. | Unit measuring | 1180 sq. ft. (Page No.18) |
| 3. | Date of Booking | 10.09.2015 |
| 4. | Date of Buyer's Agreement | 24.10.2015 (Pg. No 17 of compliant) |
| 5. | Due Date of Delivery of Possession As per Clause No. E. 24 : The possession of said premises is proposed to be delivered within by July 2018 with 6 months grace period (Page No. 25 of the compliant) | January 2019 |

[Signature]
A.O.
24-8-21



| | | |
|------------------------|---|-------------------------|
| 6. | Delay in handing over of possession till date | 3 years 1 month |
| PAYMENT DETAILS | | |
| 7. | Total sale consideration | Rs 98,83,000 /- |
| 8. | Amount paid by the complainants | Rs 13,95,291/- |
| 9. | Payment Plan | Subvention payment plan |

10. The respondent contested the complaint by filing a written reply. It is averred that case with regard to jurisdiction of Adjudicating Officer and Regulatory Authority inter-se is still pending before the Apex Court, No statutory jurisdiction is vested in the Adjudicating officer and hence the complaint should be adjourned sine die.

11. It is further contended that the compliant is bad for non-joinder of necessary party i.e. India Bulls Housing Finance Ltd which has provided major part of sale consideration. The complainant had taken loan from India Bulls Housing Finance Ltd (IBHFL in brief) for an amount of Rs 75,00,000 and a tripartite agreement dated 30.12.2015 has been executed among the parties i.e. complainants, respondent and IBHFL.

12. The complainants have not been financially prejudiced in any way, as respondent has not received any money from

dvb
A.O.
24.8.2021

them except the booking amount and rest of the paid amount has been disbursed by the IHFL. Moreover, respondent has paid substantial amount towards pre-EMI on behalf of complainants to IHFL and is entitled to refund of the same from the complainants. There was no default on the part of respondent in paying pre-EMI as under tripartite agreement the respondent had assumed liability of pre-EMI only for period of 36 months.

13. It is further averred that the delay in construction was on account of reasons that cannot be attributed to the respondent and are beyond its control. The project got delayed owing to the nation wide lockdown, imposed by the Government and no construction could take place during this period. Moreover, due to Covid-19, it became difficult for it(respondent) to arrange funds for completion of project, as banks and NBFC have made it difficult for builders to apply for loans. Again, there was delay in completion of project due to non-availability of steel/cement and other raw materials. There was shortage of water, power, and slowdown etc. These factors were not in control of respondent. It(respondent) undertakes to handover the possession ,of the unit at the earliest

14. I have heard the learned counsel for parties and have gone through the record on file.

15. It is submitted by learned counsel for respondent that this complaint pertains to compensation and interest, for grievance under sections 11(4), 12 & 18 of the Act, which lies before the Real Estate (Regulation and Development) Authority (in brief the authority), adjudicating officer is not empowered to try this complaint.

16. Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before the Hon'ble Haryana Real Estate Appellate Tribunal (In brief Appellate Tribunal) in case of **Sameer Mahawar Vs M G Housing Pvt Ltd.** Where it was held by the Appellate Tribunal on 02.05.2019, that the complaints regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer, under Rule 29 of the Rules of 2017. In September 2019, Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was further challenged before the Apex Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein Hon'ble Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana

24/8-2021
A.O.

High Court referred above. Said special leave petition is still pending before the Apex Court.

17. When the order of Hon'ble Punjab & Haryana high Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, which amounts restoration of status quo ante i.e. when the complaints seeking refund, compensation and interest were entertained by the Adjudicating Officer. No reason to return this complaint to the Authority.

18.. It is not the plea of respondent even that construction of project/unit in question is complete. It is simply contended on its behalf that the same undertakes to hand over possession of unit at the earliest. It is not clarified as what is stage of construction, at this moment.

19. There is no denial of fact and this forum can take judicial notice that lockdown due to Covid-19 started from 23rd March, 2020. As mentioned above, the respondent was obliged to hand over possession of unit in question, to the complainant by July, 2018. Covid-19 had no effect in India till then i.e. July, 2018. It does not lie in the mouth of respondent, to say that construction could not be completed due to nation wide lockdown or Covid-19.

20. It is agreed by complainants even that a Tripartite Agreement took place among the same, the respondent/builder as well as Indiabulls Housing Finance Ltd.(IHFC). Indiabulls housing Finance Ltd. is stated to have sanctioned loan of Rs.75,00,000/-. On 13.08.2021, the complainant submitted statement of account. It was

AD

AD

24, 8-2021

observed by this forum that even if such a tripartite agreement was entered among the complainants, the respondent/builder and IHFL, same did not make the latter i.e. IHFL, a necessary party. It was a dispute between the buyer and developer, on account of latter (developer) having failed to deliver possession in agreed time. Even then notice was ordered to be issued to IHFL. considering the same as a desirable party. None appeared on behalf of same.

21. A statement of account, allegedly issued by said IHFL has been put on record. If same is taken as true, two amounts i.e. Rs. 1,05,239/- and Rs. 61,35,642/- were sanctioned by IHFL as loans, out of which Rs. 1,05,239/- and Rs. 61,35,642/- (same as financed) were disbursed. Learned counsel for complainants took me through some letter written by complainant (Ms. Sunita Mishra Singh) to the respondent, copy of which is put on record. The complainant stated that she had paid to M/s Supertech Ltd./ Indiabulls Housing Finance Ltd. under subvention/ loan scheme Rs. 1,05,239/- and Rs. 6,85,212/-. (Total Rs. 8,90,451/-), in addition to booking amount of Rs. 5,04,840/-. This letter is dated 19.02.2021. It is the same amount, refund of which is claimed by the complainants.

22. The respondent admitted about the subvention scheme and also the loan taken from IHFL and again that it was its (respondent) responsibility to pay pre-EMIs. However, the respondent did not clarify the exact amounts paid by it as pre-EMIs In such a

drb
A.O.

circumstance, I have no reason to disbelieve the complainants claiming payments as referred in their letter.

23. From above discussion, it is clear that respondent failed to fulfil its promises that is to complete the construction and also to deliver possession of unit in question, to the complainant within agreed time. No reasonable explanation about this delay is given. The complainants are, therefore, entitled to get their amount refunded along with interest and compensation, in view of Section 18 of the Act. 24. The complaint in hands is thus allowed. Respondent is directed to refund amount of Rs. 13,95,291/- to the complainants within 90 days from today, along with interest @ 9.30% per annum from the dates of payment till realization of amount. The respondent is also burdened with cost of Rs. 1,00,000/- to be paid to the complainants.

25. File be consigned to the registry.



(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram
24.08.2021

Judgement uploaded on 03.09.2021