

ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 745 of 2018
First date of hearing : 21.01.2019
Date of decision : 27.02.2019

Mr. Puneet Mathur
R/o F-41, Ground floor, Tulip Garden, Sushant
Lok II, Sector-56, Gurgaon, Haryana-122001.

Complainant

Versus

M/s Supertech Ltd.
Address: 1114, Hemkunt Chambers,
89, Nehru Place, New Delhi-110019.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Jughraaj Kapoor
Shri Rishab Gupta

Advocate of the complainant
Advocate of the respondent

ORDER

1. A complaint dated 24.08.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Puneet Mathur, against the promoter M/s Supertech Ltd. in respect of flat/unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act ibid.



2. Since, the unit was booked on 12.10.2013 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

Nature of the project- Group housing colony.

DTCP license no.- 106 & 107 of 2013 dated 26.12.2013

89 of 2014 dated 08.08.2014

134-136 of 2014 dated 26.08.2014

1.	Name and location of the project	"Supertech HUES", Village Badshahpur, Sector 68, Gurugram.
2.	DTCP licence no.	106 and 107 of 2013 dated 26.10.2013
3.	Registered/ not registered	Registered
4.	RERA registration no.	182 of 2017 dated 04.09.2017
5.	Date of completion as per HRERA registration certificate.	31.12.2021
6.	Booking date	12.10.2013
7.	Date of execution of builder buyer agreement	Not executed
8.	Flat/apartment/unit no.	H/501
9.	Unit area	1180 sq. ft.
10.	Total consideration amount as per applicant file dated 07.07.2014	Rs. 94,91,822/-



11.	Total amount as per applicant file dated 07.07.2014	Rs. 10,39,500/-
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4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through its counsel appeared on 21.01.2019. The case came up for hearing on 21.01.2019, 30.01.2019 and 27.02.2019. The reply filed on behalf of the respondent has been perused.

FACTS OF THE COMPLAINT:

6. Briefly stated, facts relevant for the disposal of present complaint as that complainant submitted that, in October, 2013 he had applied for the registration and booking of one apartment in the residential project namely “SUPERTECH HUES, launched by the opposite party being developed at Sector-68, Gurgaon, Haryana. Further, respondent represented to him that respondent is developing



the above project and he was induced to purchase the above flat by showing brochures and advertisements material depicting the project will be developed as a state-of-an project and shall be one of its kind. It was stated that the “Supertech Hues” is a high-end multi-storey project being developed with the assistance of internationally renowned architects. It was also represented that there will be stellar amenities in the project as represented in the brochure. It was also represented that all the necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

7. The complainant submitted that at the time of booking the apartment in "Supertech Hues", it was informed by the opposite party to him that the total estimated cost of the booked unit bearing no. I/301 in the proposed project of the respondent would be somewhere between 75-80 lakhs and out of that total sale consideration, the complainant had made payment of Rs. 7,00,000/- ad Rs. 3,39,500/, both drawn at ICICI Bank.



8. The complainant submitted that through an email dated 30.06.2014, it was informed to the complainant by the opposite parties that the flat bearing was not I/301 which was originally booked by the complainant had been changed to H/1701, 17th floor due to some technical reasons. As such, neither the permission/consent was taken from the complainant nor any good or justified reason was given by the opposite parties for the said change.
9. The complainant submitted that he never approved such arbitrary act and the decision taken by the opposite parties thereof and demanded the cancellation of booking and return of amount paid by the complainant. Also, submitted that within a week from the earlier arbitrary changes made by the opposite party, once again the initial allotted flat bearing no. I/301 which was allegedly changed to H/1701 for so called technical reasons, was further changed to H/501, 5th floor at Supertech Hues. Also, the initial estimated cost of the unit booked was enhanced to Rs 92 lakhs approx. A booking/allotment letter dated 07.07.2014 in this regard was



sent by the opposite parties to the complainant through email.

10. The complainant submitted that in July, 2014 when the opposite party suddenly out of nowhere increased the cost of the unit booked by the complainant from 70-75 lakhs to 92 lakhs approx., the complainant being a middle class man who had planned to buy the flat in the project of the opposite party by investing his hard-earned money and with the help of bank loan, got shocked to see the revised price/cost of the flat which was completely out of the reach of the complainant and moreover, he was even refused an increase in the bank loan which was initially approved for Rs. 55 lakhs as per the complainant's eligibility and the cost of the unit booked.

11. The complainant submitted that since August 2014, he has been requesting the respondent for a refund of his amount through repeated emails and regular visits to their offices. It is pertinent to mention here that the first email in this regard was sent on 04.08.2014 stating therein the sufficient reasons as mentioned above for his demand of refund. However, no



refund has been processed by the opposite parties despite various emails and visits.

12. The complainant submitted that the trail of the emails from the year 2014 to till date, wherein the request regarding refund was raised and forwarded time and again to different employees of the opposite parties, the record of emails clearly show that a number of reminders have been sent by the complainant to the employees/ officers/representatives of the opposite party. However, unfortunately nobody had responded to the emails of the complainant. One of such responses received by the complainant vide dated 10.08.2017 says "we request you to seek an alternative investment with us as refund is not a viable option in current scenario", whereas it had been assured to the complainant in previous emails that the refund and cancelation of the booking was already under process and would surely be done soon.



13. The complainant submitted that the opposite parties never issued the complainant with the flat buyer's agreement nor the amount has been refunded as paid by the complainant to

the opposite party and thus, the above-mentioned actions and wilful illegal omission of non-issuance of flat buyer's agreement, a set of company's policy containing the complete terms and conditions even after the requests being made and again.

14. The complainant submitted that he very basic right i.e. right to information which is one of the several pillars and foundation of fair, equitable and transparent trade of the consumer (complainant in the present case) has been breached and violated by the opposite party by not providing him the copy of flat buyer agreement and the company's policy on which the officials of the opposite party rely for processing the refund and cancellation of booking.

15. The complainant submitted that the legal notice in regard to the abovementioned amount was duly sent and served to the opposite party in the first week of May, 2018. However no effort has been made by the opposite party to resolve the issue of the complainant, nor any communication has been received on behalf of the opposite party which further display



and testify the negligent, dishonest and malafide intention of the opposite parties.

ISSUES TO BE DECIDED:

12. The complainant has raised the following issues:

- i. Whether the promoter changed the flat/unit booked by the buyer arbitrarily?
- ii. Whether the promoter/respondent is liable to refund all the amount deposited by the complainant till date i.e. 10,39,500/- ?

RELIEFS SOUGHT:

13. The complainant is seeking the following reliefs:

- i. Refund of all the amount deposited till date i.e. Rs. 10,39,500/- along with interest from the date when payments were made till realization of the amount in full.
- ii. In alternative and without prejudice to the above this ld. authority may award delay penalty interest @ 24 % for each month of delay, till the handing over of the possession.
- iii. Direct the respondent to pay a sum of Rs. 50,000/- to the complainant towards the cost of litigation.



- iv. Pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

REPLY BY RESPONDENT:

14. The respondent submitted that the project "Supertech Hues" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 04.09.2017. The authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project on or before the year 2021 but the structure work of tower H is 60-65% complete. The complainant has booked a unit on 5th floor in the said tower which is almost complete up to 20th floor. The respondent also undertakes to complete the project by the year 2021 but will give offer of possession to the complainant by June 2020.



15. It is also submitted that due to stagnation, sluggishness, down fall in real estate market, due to demonetization as well as coming into force of GST, speed of work/construction of

every real estate sector market has been too slump which results in delay of delivery of possession as well as financial loss to the promoters.

16. The respondent submitted that the said project is a continuous business of the respondent and it will be completed by the year 2021. The current status of the tower-H is that almost 60-65% of the building has been constructed and superstructure and some internal development is yet to be completed. the complainants have booked a unit on 5th floor in the said tower which is constructed up to 20th floor. The photographs of current status of the project are provided. The respondent also undertakes to complete the project by the year 2021 but will give offer of possession to the complainant of their unit by June 2020.



17. The respondent further submitted that the allotment of flat to the complainant was changed from tower H unit no 1701 to unit no 501 as after scrutinization from all record, it came to the knowledge of the respondent that inadvertently the unit no 1701 has already been sold to some other person by other officials of the respondent. After having knowledge within a

week the respondent informed the complainant and the final allotment i.e. H-501 was allotted to the complainant. The said mistake was not intentional or to harass the complainant rather it was inadvertent.

18. The builder buyer agreement sent to the complainant was not signed and that the complainant has certain dues. The respondent on non payment of further remaining dues, have cancelled the unit in July 2017 and agreed to refund the amount after deducting the cancellation charges. If the complainant agreed to continue with Supertech Hues, he may choose the unit from available inventory and the respondent is also ready to provide allotment according to their will.

DETERMINATION OF ISSUES: -

15. After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:

- i. With respect to the **issue no. 1** raised by the complainant, in the present case, it was informed by the respondent that the flat no. allot unit I/301 which was initially booked by the complainant with annexure C-3.



Subsequently has been changed to H/1701, 17th floor due to some technical reasons with annexure C-4. Thereafter, further changed to H/501, 5th floor. The authority is of the view that there were certain higgling and haggling inter se both the parties with respect to change of unit. As a matter of fact no builder buyer agreement was pragmatized.

- ii. With respect to the **issue no. 2** raised by the complainant, there is no BBA executed between the parties hence, the due date of possession cannot be ascertained. There are receipts amounting to Rs. 10,39,500/- which the complainant has paid to the respondent. Out of the total sale consideration of Rs. 94,91,822 a sum of Rs. 10,39,500/- has been paid by the complainant as on date. Complainant was asking for refund of amount from the year 2014 to 2018. Under the circumstances the respondent should have either materialized the builder buyer agreement or should have cancelled the unit.



On 19.09.2017, the respondent sent a notice for cancellation of unit. The respondent is well within his right to cancel the unit, if the complainant is failing to pay the remaining dues. The complainant is also liable to pay the balance dues to the respondent to get the possession of the unit. In view of the facts and circumstances of the matter, the authority is of the considered view that respondent should refund the amount deposited by the complainant after deducting 10% of basic sale price along with prescribed rate of interest i.e. 10.75% per annum. Accordingly the respondent is directed to refund the amount deposited by the complainant after deducting 10% of the basic sale price.

FINDINGS OF THE AUTHORITY:



15. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in **Simmi Sikka V/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per

notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

16. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
17. Written arguments on behalf of the complainant dated 26.02.2019 and written submissions on behalf of the respondent dated 27.02.2019 have been placed on record and have been considered by the authority.
18. Complainant booked a flat no H/501 in project "Supertech HUES", sector 68, Gurugram on 31.01.2014 by making a payment of Rs. 10,39,000/- in two instalments. There were certain higgling and



haggling inter se both the parties with respect to change of unit. As a matter of fact no builder buyer agreement was pragmatized. Out of the total sale consideration of Rs. 94,91,822 a sum of Rs. 10,39,500/- has been paid by the complainant as on date. Complainant was asking for refund of amount from the year 2014 to 2018. Under the circumstances the respondent should have either materialized the builder buyer agreement or should have cancelled the unit.

19. On 19.09.2017, the respondent sent a notice for cancellation of unit. The respondent is well within his right to cancel the unit, if the complainant is failing to pay the remaining dues. The complainant is also liable to pay the balance dues to the respondent to get the possession of the unit. In view of the facts and circumstances of the matter, the authority is of the considered view that respondent should refund the amount deposited by the complainant after deducting 10% of basic sale price along with prescribed rate of interest i.e. 10.75% per annum. Accordingly the respondent is directed to refund the amount deposited by the complainant after deducting 10% of the basic sale price.



DECISION AND DIRECTIONS OF THE AUTHORITY:

20. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:-

- i. The respondent should refund the amount deposited by the complainant after deducting 10% of basic sale price along with prescribed rate of interest i.e. 10.75% per annum. Accordingly respondent is directed to refund the amount deposited by the complainant after deducting 10% of the basic sale price.

21. The order is pronounced.

22. Case file be consigned to the registry.

23. Copy of this order be endorsed to the registration branch.



(Samir Kumar)
Member

Dated: 27.02.2019

(Subhash Chander Kush)
Member

Judgement Uploaded on 19.03.2019