

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 656 of 2019
First date of hearing : 02.05.2019
Date of decision : 02.05.2019

Mr. Deepak Bawari.
R/o. A-803, Sispal Vihar,
Sector – 49, Gurugram, Haryana- 122018. **Complainant**

Versus

M/s Supertech Ltd.
Office Address: 1114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-
110019. **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:
Shri Deepak Bawari **Complainant in person**
Shri Rajender Kumar **Advocate for the complainant**
Shri Rishabh Gupta **Advocate for the respondent**

ORDER

1. A complaint dated 15.02.2019 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. Deepak Bawari, against the respondent M/s Supertech Ltd., on account of violation of the clause 24 of the buyer developer agreement dated 11.05.2015 in respect of flat/unit no. R0380F00602, in the

- project “Supertech Hues” at Sector 68, Gurugram for not handing over possession by the due date i.e. by 31.01.2019 which is an obligation of the promoter under section 11(4)(a) of the Act ibid.
2. Since, the builder developer agreement dated 11.05.2015 was executed prior to the commencement of the Haryana Real Estate (Regulation and Development) Act, 2016, therefore the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as application under section 34 (f) for non-compliance of obligation on the part of the promoter/ respondent herein.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Supertech Hues”, Village Badshahpur, Sector 68, Gurugram.
2.	DTCP license no.	106 and 107 of 2013 dated 26.12.2013
3.	Nature of real estate project	Group housing project
4.	Flat/unit no.	R0380F00602/flat0602
5.	RERA registered/ unregistered	Registered vide no. 182 of 2017
6.	Date of completion as per RERA registration certificate.	31.12.2021
7.	Date of booking	24.01.2014
8.	Date of execution of builder developer agreement	11.05.2015 (Annx C-3)

9.	Payment Plan	Construction linked payment plan (Pg. 29 of the complaint)
10.	Total consideration amount as per the agreement	Rs.88,39,236/-
11.	Total amount paid by the complainants till date	Rs.76,58,340.06/- (as per Pg. 16 of the complaint)
12.	Due date of delivery of possession as per possession clause 24 of buyer developer agreement i.e. July,2018 + 6 months' grace period	31.01.2019
13.	Delay in handing over possession till 2.05.2019	3 months and 2 days approx.

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. A buyer developer agreement dated 11.05.2015 is available on record for the aforesaid flat/unit no. R0380F00602 according to which the possession of the said unit was to be delivered by 31st January, 2019. The project has been delayed and the respondent has failed to fulfil its contractual obligation till date which is in violation of the provisions of section 11(4)(a) of the Act *ibid*.
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 02.05.2019. The

case came up for hearing on 02.05.2019. The reply filed by the respondent on 14.03.2019 has been perused.

Facts of the complaint :-

6. Brief facts relevant for the disposal of the present complaint as per the complainant's version are as follows -

“ (i) That in response to the representations made through their agents of bookings in the project named “HUES” in Sector 68, Gurugram by the respondent company M/s Supertech Limited, the complainant booked a 2 BHK+2 TOI flat, measuring 1180 sq. ft., on 24.01.2014 and paid an amount of Rs. 6,00,000/- vide cheque .The complainant continued to make payment to the respondent company and paid an amount of Rs. 76,48,015/- till 08.09.2017 which has been reflected in the outstanding statement issued by the respondent company on 06.10.2017.

(ii) The complainant was allotted unit no. R0380F00602/flat#602 in “F” tower. Basic sale price of the flat was Rs. 73,75,236/- and total cost including other allied charges was Rs. 88,39,236/-. Builder developer agreement (*hereinafter referred to as “BDA”*) was executed on 11.05.2015.

(iii) The date of booking according to the BDA is 24.01.2014. The project was not launched at that time and was launched later in May 2014. However, an amount of Rs. 10,92,145/- had already been taken by the respondent company from the complainant. The complainant sought certain clarifications vide his email dated 28.03.2014 about the discrepancies in the super area mentioned in the booking form and the BDA to which the respondent replied that *“area mentioned earlier were under approval and tend to change.”* Such a reply from the respondent shows that at the time of booking not only that the project was not launched but even the necessary approvals had not been obtained by the respondent before the bookings were made. The respondent was collecting money from the complainant and other allottees without getting required approvals from various government departments. The respondent is obliged to share the details of all approvals taken/ pending on quarterly basis in terms of Section 11 (1) (d) of the Real Estate (Regulation and Development) Act, 2016. However, no such details have ever been shared by the respondent with the allottees of the project which is a clear violation of section 11(d) of the Act *ibid*. Collecting money from the buyers without necessary approvals

amounts to cheating. It is pertinent to mention that the Act is applicable to all the ongoing incomplete project and the respondent cannot take the plea that the Act being of the year 2016 is not applicable to the projects launched before the Act came into being.

(iv) According to clause 1 of the BDA, the possession of the unit was to be given to the complainant by July 2018 extendable by a grace period of 6 months. It is a matter of common understanding that the grace period can be allowed only due to unforeseen circumstances which have never been projected by the respondent. Similar date of delivery was indicated in clause 24 of the BDA. Hence, the respondent was bound by agreement to offer possession of the unit by July 2018 and by January 2019 in case of some unforeseen circumstances which the respondent ought to have been justified. The promised date of possession has gone past and the complainant thus has the right to opt out of the project and claim refund of his money with interest in terms of section 18 of the Real Estate (Regulation and Development) Act, 2016. According to clause 1 of the terms & conditions of the BDA, the complainant was required to pay an interest of 2% per month for any delayed payments.

(v) The complainant sent a mail dated 19.02.2018 to the respondent sharing his concern about the slow progress of the project and enquiring about the date of possession of the flat. The mail of the complainant was replied by the respondent vide their mail dated 24.02.2018 in which it was stated by the respondent that possession of the flat was expected in second quarter of the year 2019.

(vi) The complainant sent other mails to the respondent company on 26.02.2018 and 07.03.2018 expressing concern about the slow progress of the project to which the respondent replied that the project will be handed over by June 2019. However, according to the assessment made by the complainant on a personal visit of the project site, the project is nowhere near completion and hence the complainant wants to withdraw from the project seeking refund of his money with interest @ 2% per month which the respondent would have charged the complainant in terms of clause 1 of the terms & conditions of the BDA. Since, the possession of the flat has not been handed over by the respondent by due date as specified in BDA the complainant is entitled to withdraw from the project and

ask for refund of the amount paid by him with interest in terms of section 18 and 19(4) of the Act *ibid*.

(vii) That the interest rate of payable by the respondent to the complainant shall be in accordance with section 2(za) of the Act. Since, the respondent in this case having defaulted on compliance of various sections of the Act as stated herein above and hence is liable to pay an interest equal to what the complainant would have been charged in case of default.

(viii) That under the given circumstances, the complainant has no other option except approaching the hon'ble authority for justice. Hence, the complainant has filed the instant complaint in terms of Section 31 of the Act before the hon'ble authority.

(ix) That the respondent company accepted money against the booking of the flat even before getting necessary approvals which amounts to cheating. Hon'ble authority has recently passed order dated 16.10.2018 in complaint no. 505/2018, Mr Devender Singh Babla&Anr v.M/s Supertech, the case pertaining to the same project. The instant case of the complainant is squarely covered by the order dated 16.10.2018 and being similarly placed, the

complainant herein deserves the same relief of refund of the money paid by him along with interest.

7. Issues to be decided: -

1. Whether the acceptance of booking by the respondent made by the complainant before the launch of the project without getting all necessary approval is illegal?
2. Whether acceptance of booking of the flat by the respondent and taking money on that account from the complainant before launch of the project and even before getting all necessary approvals, amounts to cheating?
3. Whether the complainant is within his rights to opt out of the project in terms of section 18 of the Real Estate (Regulation and Development) Act, 2016 since the respondent has failed to offer the possession of the flat to the complainant within the time promised in the builder developer agreement dated 11.05.2015?
4. Whether the complainant is entitled to claim the refund with interest @2% per month on the grounds that his booking was accepted by the respondent even before the launch of the project and the possession has not been offered to the complainant within the time promised in

the builder developer agreement and the complainant has decided to opt out of the project in terms of section 18 and 19(4) of the Real Estate (Regulation and Development) Act, 2016 by the respondent?

8. Reliefs sought: -

- Direct the respondent to refund to the complainant immediately, the amount of Rs. 76,58,340/- with an interest @ 2% per month from the date of payment of each instalment till the date of actual refund made by the respondent.

Respondents' reply:-

9. The respondent contended that the complaint filed by the complainants is not maintainable in the present form and is filed on the false and frivolous grounds.
10. The respondent submitted that the complainant has not come with clean hands before this hon'ble forum and have suppressed the true and material facts from this hon'ble forum.
11. It is submitted that the project "Supertech Hues" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The authority had issued the said certificate which is valid for a period commencing from 4.9.2017 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.

12. The respondent submitted that the possession of the said premises is proposed to be delivered by the respondent to the apartment allottee by July 2018 with an extended grace period of 6 months which comes to January, 2019. The completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials and/ or water supply or electric power and/ or slow down strike etc. which is beyond the control of respondent. If non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project delayed to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was /

has been stopped for few days due to high rise in pollution in Delhi NCR.

13. It is also submitted that due to stagnation, sluggishness, down fall in real estate market, due to demonetisation as well as coming into force of GST, the 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. The plea of allottees in all the complaints for refund is not tenable in the eye of law. Thus, due to huge down fall in the real estate market, all the allottees have planned to seek refund of the invested money.
14. It is also submitted that the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real sector market. Thus, the plea/ relief of refund claimed by every allottee is not sustainable in the eye of law rather is a pre planned to get refund their money, to get safe from breach of contract in future for making further instalments, by filing such frivolous complaints.
15. The respondent submitted that the said project is a continuance business of the respondent and it will be completed by the year 2021. The current status of the

project is that superstructure work of the tower has been constructed and some internal development is yet to be completed/ developed. The complainant has booked the flat at 6th floor, in Tower F which is almost constructed. The photographs of the current status of the project are attached herewith as **Annexure R2**. 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.

16. The respondent submitted that when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted. Hence, the complainant is not entitled for any compensation claimed except for compensation for delayed possession as per clause 2 of the builder buyer agreement.

Determination of issues:-

17. As regards **first and second issue** raised by the complainant, the authority has come across that the complainant has failed to produce any documentary evidence in support to prove his alleged non -approval of project prior to acceptance of booking amount and also that the cheating has been committed by the respondent. Hence, these issues are answered in negatives.

18. As regards **third and fourth issue** raised by the complainant, from the perusal of record, the authority came across that as per clause 24 of buyer developer agreement dated 11.5.2015 for subject unit no. R0380F00602 the possession of the flat/unit was to be delivered by the respondent by July, 2018 with further grace period of 6 months. So, the due date of delivery of possession on calculation comes out to be 31st January, 2019, however, the respondent has failed to deliver the possession till date. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area of the subject flat/unit as per the terms of builder developer agreement dated 11.05.2015 is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in **para 181 of Neelkamal Realtors Suburban Pvt Ltd vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual

purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

19. Since, the project is registered and the revised date of delivery of possession is mentioned in the RERA registration certificate as 31.12.2021. So, order for the refund of the paid amount at this stage is not feasible in the interest of justice as it will defeat the interest the other allottees as well who wishes to continue with the project. There is a delay of 5 months approx. in delivery of possession for which the complainants are entitled for delayed possession charges at prescribed rate of interest @ 10.70% p.a. as per the proviso of section 18(1) of the Act *ibid.*

Findings of the authority: -

20. 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. 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.

21. Arguments heard. As per clause 24 of the buyer's agreement dated 11.05.2015 for unit no. 602, tower F in the project "Supertech Hues", Sector -68, Gurugram, possession was to be handed over to the complainant by July, 2018 plus 6 months grace period which comes out to be 31.01.2019. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 76,58,340/- to the respondent against the total sales consideration of Rs. 88,39,236/-. As such the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.70% per annum with effect from 31.01.2019 as per the provisions of section 18(1) proviso of the Real Estate (Regulation and Development) Act, 2016 till the date of offer of possession.

Decision and directions of the authority : -

22. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby

issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent no. 1 is duty bound to hand over the possession of the said unit on or before 31.12.2021 as per RERA registration certificate.
- (ii) The respondent is liable to pay delayed possession charges for every month of delay at prescribed rate i.e. 10.70% p.a. with effect from 31.01.2019 (due date of delivery of possession) till the offer of the possession to the complainant.
- (iii) The interest so accrued at the prescribed rate of interest i.e. 10.70% p.a. from 31.01.2019 (due date of delivery of possession) till the date of this order be paid within 90 days and thereafter monthly interest be paid on 10th of each subsequent month.
- (iv) The respondent - promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.
- (v) The respondent - promoter is further directed to file an affidavit signed by one of its directors of the

c6ompany stating that they will deliver the possession of the unit in June, 2020.

- (vi) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. Interest on the due payments from the complainant shall be charged from the complainant at the prescribed rate of interest i.e. 10.70% per annum by the respondent which is the same as is being granted to the complainant in case of delayed possession.

23. The order is pronounced.
24. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: - 02.05.2019.

Judgement uploaded on 27.05.2019