

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

Complaint no. : 743 of 2018
First date of hearing : 18.12.2018
Date of decision : 18.12.2018

Mr. Puneet Dhar and
Mrs. Billa Dhar
R/o. C-63B, 1st floor,
Ardee City, Sector 52,
Gurugram, Haryana-122003

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms. Vaishnavi R Iyer
Shri Rishabh Gupta

Advocate for complainant
Advocate for the respondent

ORDER

1. A complaint dated 24.8.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Puneet Dhar and Mrs. Billa Dhar in respect of apartment/unit





- described below in the project 'Supertech Hues', on account of violation of the section 11(4)(a) of the Act ibid.
2. Since, the buyer's agreement has been executed on 19.7.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 Project:** Residential group housing colony

***DTCP license no.:** 106 and 107 of 2013 dated 26.12.2013

1.	Name and location of the project	"Supertech HUES", Village Badshahpur, Sector 68, Gurugram.
2.	Flat/apartment/unit no.	0501, tower-N
3.	Unit area	1430 sq. ft'
4.	Registered/ not registered	Registered
5.	RERA registration no.	182 of 2017 dated 4.9.2017
6.	Date of completion as per HRERA registration certificate.	June 2020
7.	Date of execution of builder buyer agreement	19.7.2014





8.	Total consideration amount as per agreement dated 19.7.2014	Rs.1,12,42,040/-
9.	Total amount paid by the complainants till date	Rs.33,84,414/-
10.	Percentage of consideration amount	30.10%
11.	Booking date	30.6.2014
12.	Due date of delivery of possession. (42 months i.e. December, 2017 + 6 months grace period) clause 25	18.6.2018
13.	Delay in handing over possession till date	6 months
14.	Penalty clause as per builder buyer agreement dated 19.7.2014	Clause 25 of the BBA i.e. Rs.5/- per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A builder buyer agreement is available on record for the aforesaid apartment according to which the possession of the said unit is to be delivered by 18.6.2018. The respondent has not delivered the possession of the said unit as on date to the purchaser.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 18.07.2018 & 04.09.2018. The





reply has been filed on behalf of the respondent on 10.07.2018 which has been perused.

Facts of the complaint

6. The complainants were allotted flat no.0501 tower-N in "Supertech Hues" admeasuring 1430 sq. ft' vide allotment letter dated 2.7.2014. The builder buyer agreement was executed on 19.7.2014 for a total sale consideration of Rs.1,12,42,040.
7. The complainants made payments as per the payment plan upto the amount of Rs.33,84,414/- which amounts to 30.10%. The complainants took a loan of Rs.16,41,214 and the complainants have paid R.81,651 to the bank as interest.
8. The construction work is going too slow and is nowhere near completion. The complainants have spent their life earnings on this unit and now stand nowhere.
9. **Issues raised by the complainants are as follow:**
 - i. Whether the respondent has breached the provisions of the act and the agreement by not completing the construction and providing possession?
 - ii. Whether the complainants are entitled to refund of the entire amount paid to the respondent?



- iii. Whether the respondent is liable to pay interest to the bank on the loan taken by complainants?
- iv. Whether the respondent is liable to refund amount paid to bank for default by respondent in paying interest as per agreement?

10. Relief sought

- i. To direct the respondent to refund Rs.33,88,414 along with pendente lite and future interest thereon @24% from due date of payment till the date of actual payment.
- ii. To direct the respondent to pay Rs.81,651 on account of interest paid to the bank by the complainant.
- iii. To direct the respondent to provide penalty for delay as per allotment agreement @Rs.5 per sq. ft'.
- iv. To award Rs.1,00,000 as the cost of the complaint.
- v. To pass such other order as this hon'ble authority may deem fit.



Respondent's Reply

11. The complaint is not maintainable before this authority as the complainant has not come with clean hands and has suppressed material information.
12. The project of respondent is registered with RERA vide certificate no.182 of 2017 dated 4.9.2017 which is valid till 31.12.2017. So, the respondent undertakes to complete the said project on or before the year 2021.
13. The completion of the building was delayed due to non-availability of steel, cement and other building materials which is beyond the control of the respondent. Moreover, due to demonetisation, GST and other factors the speed of construction has been slow in the real estate sector.
14. It is submitted that enactment of RERA is to provide housing facilities with modern infrastructure to the allottees and to protect their interests but not to spoil the development of the project by refunding the amount to the allottees.
15. The project will get completed by 2021 and the project is completed upto almost 60-65%. The complainants have booked 5th floor in tower-N which is completed upto 22nd floor. The photographs are attached as annexure R2.



16. The respondent is not liable to refund the complainants as per clause 2 of the agreement as the clause provides exceptions with respect to events not in control of the respondent.

Determination of issues

17. With respect to the **first and second issue** raised by the complainants, as per clause 25 of builder buyer agreement, the possession of the flat was to be handed over by 18.6.2018. The clause regarding the possession of the said unit is reproduced below:

"25. Possession of unit

The possession of the unit shall be given in 42 months i.e. by December 2017 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the allottee/s @ Rs.5/- per sq. ft. of super area of the unit per month for any delay in handing over the possession of the unit beyond the given period plus the grace period of 6 months and upto the offer letter of possession or actual physical possession whichever is earlier.

18. Accordingly, the due date of possession is 18.6.2018. So, there has been a delay of 6 months till date. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area of the said flat as per Clause 25 of builder buyer agreement 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. The complainants are demanding refund of the entire amount paid till date but keeping in view the current status of the project and the revised date as per the RERA registration certificate, giving refund at this time will hamper the interest of other allottees in the project. So, the complainants are not allowed to get refund and they will get interest for delay @10.75% p.a. from the due to date of possession till the possession is actually delivered.
20. This authority does not have jurisdiction to entertain issues relating to compensation but the complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer. Therefore, the **third and fourth issue** raised by the complainants regarding compensation becomes superfluous.



FINDINGS OF THE AUTHORITY

21. The preliminary objections raised by the respondent challenging jurisdiction of the authority stands dismissed. 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 complainants at a later stage.
22. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

23. 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) Project is registered with the authority and the revised date of delivery of possession is June 2020 as per registration certificate.
- (ii) As per clause 25 of the builder buyer agreement dated 19.7.2014 for unit no.0501, tower-N, in Supertech HUES, Village Badshahpur, Sector-68, Gurugram, possession was to be handed over to the complainant within a period of 42 months + 6 months grace period which comes out to be 18.7.2018. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.33,84,414/- with the respondent against the total sale consideration of Rs.1,12,42,040/- which comes out to be 30% only.
- (iii) However, the builder has not fulfilled his obligation to deliver the possession in time. As per provisions of section 19(6) of the Real Estate (Regulation and Development) Act, 2016 complainant is also duty bound to abide by the terms and conditions of agreement and make timely payment. As such ~~complainant~~ ^{respondent} is directed to make payment at the prescribed rate of interest i.e. 10.75% p.a. till the handing over of possession of unit by the



*Corrected vide order
dated 27/05/19*

respondent. However, complainant is entitled to late delivery charges at par. Builder as well as complainant are directed to sort out their matter at their own level.

- (iv) As such, complainant is entitled for delayed possession charges of **Rs.1,81,912.27** on the principal amount paid at the prescribed rate of interest i.e. 10.75% per annum w.e.f 18.6.2018 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over the offer of possession.

24. The order is pronounced.

25. Case file be consigned to the registry.

Principal amount	Amount paid	Interest accrued
Rs.1,12,42,040	Rs.33,84,414	Rs.1,81,912.27




(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:18.12.2018

Corrected Judgement uploaded on 27.05.2019

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 18.12.2018
Complaint No.	743/2018 Case Titled As Puneet Dhar V/S Supertech
Complainant	Puneet Dhar
Represented through	Ms. Vaishnavi R Iyer, Advocate for the complainant.
Respondent	Supertech
Respondent Represented through	Shri Rishabh Gupta Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Project is registered with the authority and the revised date of delivery of possession is June 2020 as per registration certificate.

As per clause 25 of the Builder Buyer Agreement dated 19.7.2014 for unit No.0501, Tower-N, in Supertech HUES, village Badshahpur, Sector-68, Gurugram , possession was to be handed over to the complainant within a period of 42 months + 6 months grace period which comes out to be 18.7.2018. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.33,84,414 /- with the respondent

against the total sale consideration of Rs.1,12,42,040/- which comes out to be 30% only.

However, the builder has not fulfilled his obligations to deliver the possession in time. As per provisions of Section 19 (6) of the Real Estate (Regulation & Development) Act, 2016 complainant is also duty bound to abide by the terms and conditions of agreement and make timely payment. As such, complainant is directed to make payment at the prescribed rate of interest i.e. 10.75% per annum till the handing over the possession of the unit by the respondent. However complainant is entitled to late delivery charges at par. Builder as well as complainant are directed to sort out their matter at their own level.

As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f 18.7.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over the offer of possession.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
18.12.2018

Subhash Chander Kush
(Member)
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described below in the project 'Supertech Hues', on account of violation of the section 11(4)(a) of the Act *ibid*.

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FINDINGS OF THE AUTHORITY

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- (iii) However, the builder has not fulfilled his obligation to deliver the possession in time. As per provisions of section 19(6) of the Real Estate (Regulation and Development) Act, 2016 complainant is also duty bound to abide by the terms and conditions of agreement and make timely payment. As such complainant is directed to make payment at the prescribed rate of interest i.e. 10.75% p.a. till the handing over of possession of unit by the



respondent. However, complainant is entitled to late delivery charges at par. Builder as well as complainant are directed to sort out their matter at their own level.

- (iv) As such, complainant is entitled for delayed possession charges of **Rs.1,81,912.27** on the principal amount paid at the prescribed rate of interest i.e. 10.75% per annum w.e.f 18.6.2018 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over the offer of possession.

24. The order is pronounced.

25. Case file be consigned to the registry.

Principal amount	Amount paid	Interest accrued
Rs.1,12,42,040	Rs.33,84,414	Rs.1,81,912.27



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:18.12.2018

Judgement Uploaded on 05.01.2019