

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

Complaint no. : 194 of 2019
First date of hearing : 03.04.2019
Date of decision : 30.04.2019

Mr. Deepak Kumar Mitra
R/o. H.no. CA-03, Block CA, DDA Flats,
Munirka, New Delhi-110067

Complainant

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:

Shri Rajendra Kumar Advocate for the complainant
Shri Rishabh Gupta Advocate for the respondent

BRIEF

1. A complaint dated 29.01.2019 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 Kumar Mitra, against the promoter M/s Supertech Ltd. on account of violation of the clause 24 of buyer developer

agreement executed on 26.08.2014 in respect of flat/unit described as 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 buyer developer agreement has been executed on 26.08.2014, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory 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 project.**
- **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.	Project area	32.83 acres

3.	Flat/apartment/unit no.	R0380G00303, tower G, 3 rd floor
4.	Unit area	1180 sq. ft.
5.	Registered/ not registered	Registered
6.	RERA registration no.	182 of 2017 dated 04.09.2017
7.	Date of completion as per HRERA registration certificate.	31.12.2021
8.	Tripartite agreement	27.08.2014
9.	Payment Plan	Subvention payment plan
10.	Date of execution of buyer developer agreement	26.08.2014
11.	Total sale consideration as per agreement	Rs.93,74,720/-
12.	Total amount paid by the complainants till date	Rs.88,47,257.78/- as per customer portal dated 13.12.2018
13.	Booking date	12.10.2013
14.	Due date of delivery of possession as per clause 24 of the said agreement- 42 months i.e. April 2017 + 6 months grace period	31.10.2017 The grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond control of the respondent
15.	Delay in handing over possession till date	1 years 5 months and 30 days
16.	Penalty clause as per buyer developer agreement dated 26.08.2014	Clause 24 of the agreement 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 complainant and the respondent. A buyer developer agreement is available on record for the aforesaid flat/unit according to which the possession of the said unit is to be delivered by 31.10.2017. 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 respondent through its counsel appeared on 03.04.2019. The case came up for hearing on 03.04.2019 and 30.04.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainant submitted that in response to the representation made through there agent of booking in the project named "HUES" in Sector 68, Gurugram by the respondent, the complainant booked 2 BHK+TOI flat, admeasuring 1180sq. ft. on 12.10.2013 and [paid an amount of RS. 18,00,000/- on 13.10.2013. It continued to make

payment to respondent and paid an amount of Rs. 88,47,257/- till 09.10.2018.

7. The complainant submitted that he was allotted unit no. R0380G00303, tower G, 3rd floor. Basic sale price of flat was Rs. 80,28,720/- and total cost including other allied charges was Rs.93,74,720/-. Buyers developer agreement was executed on 26.08.2014.
8. The complainant submitted that he later came to know that the respondent had no valid licence to develop the project at the time of booking which was obtained by the respondent later on 26.12.2013. This fact has already been noted by the hon'ble authority in complaint no. 505 of 2018.
9. The complainant submitted that according clause 1 of the agreement the possession of the unit was to be given to the complainant within 42 months that is by April. 2017 plus six months grace period. Hence, the respondent was bound by agreement to offer possession of unit by October, 2017 in case of some force unseen circumstances. The promise date of possession has gone passed long back and it has right to opt

out of the project and claim refund of the money along with interest.

10. The complainant submitted that another general agreement related to bank loan was executed between the complainant and respondent on 26.08.2014. According to the said agreement the complainant had opted for “no pre EMI till possession scheme”. This scheme was termed as subvention scheme valid from August, 2014 to February, 2017. The tenure was based on the promise of the respondent to hand over the possession in April, 2017. As per the agreement the complainant was not required to pay nay EMI or pre-EMI before offer of possession of the unit. however, the respondent has stopped paying the EMI after September, 2018. Hence, the respondent has blatantly violated various clauses of the said agreement.

11. The complainant submitted that a tripartite agreement was executed on 27.08.2014 by the complainant, respondent and HDFC bank. According to said agreement EMI of loan was to start at the time of completion of the loan disbursement. Before the start of EMI, pre-EMI was to be paid. However,

according the MOU signed between the complainant and respondent the liability of paying all such EMI/pre-EMI was that of the respondent, the fact which was intimated to the bank.

12. The complainant submitted that the respondent paid pre-EMI/EMI only till September 2018 and stop paying thereafter.

It is pertinent to mention that the bank has revised the rate of interest on loan to 10.15% because of which the amount of EMI increased from Rs. 46,101/- to Rs. 61,772/-. The EMI's after September 2018 are being paid by himself which is clear violation of MOU and all other agreement.

13. The complainant submitted that he sent an e-mail dated 22.10.2018 to the respondent enquiring about the status of the project and also raised the issue of payment of delay penalty of Rs. 5 per sq. ft. in terms of buyer developer agreement and non- payment of EMI in terms of MOU . it was also stated by the complainant that while EMI amount was Rs. 59,946/-, the respondent has been paying only Rs. 46,101/-. The respondent replied to the mail of it vide mail dated 23.10.2018 indicating the date of completion of the project as August, 2019 and

promised to pay delay penalty of Rs. 5/- per sq. ft. It was further stated that Ankita would help the complainant for non-payment of EMI. Further he vide mail dated 25.10.2018 expressed his intention to quite the project and requested for refund of his money with interest.

14. The complainant submitted that the respondent replied to the mail him on 25.10.2018 vide mail dated 29.11.2018 in which they declined to make refund to the complainant and unilaterally changed the terms of the MOU dated 26.10.2018 and asked the complainant to pay the EMI's for which he was offered certain so called incentives. He replied to the said mail of the respondent vide mail dated 13.12.2018 in which he brought out the anomalies in the details of the payment of EMI's by the respondent and how the respondent was trying to cheat him.

15. **The relevant issues in the present complaint are as follow:**

- i. Whether the complainant is within his right to opt out of the project in terms of section 18 of the RERA, 2016 since the respondent has failed to offer the possession of the

flat to the complainant as promised in the buyer's developer agreement dated 26.08.2014?

- ii. Whether the respondent has violated the MOU dated 26.08.2014 by not paying the EMI's to the HDFC bank after September, 2018?

16. The complainant is seeking the following reliefs:

- i. Direct the respondent to refund the amount of Rs. 88,47,257/- paid by the complainant with an interest @2% per month from the date of payment of each instalment till the date of actual refund made by the respondent.
- ii. Direct the respondent to make payments of pre-EMI instalments to HDFC bank, with immediate effect, in accordance with the subvention scheme, against the loan taken by complainant.
- iii. Pass any other orders/directions as the hon'ble authority may deem fit in the facts and circumstances of the case.

Respondent's Reply:

17. 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, he hereby undertakes to complete the said project on or before the year 2021.

18. The respondent submitted that it is pertinent to mention here that the possession of the said premises is proposed to be delivered by him to the allottee by April 2017 with an extended grace period of 6 months which comes to by October 2017. 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 and if non-delivery of possession is the result of any act above mentioned, he shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed between the complainant and him. The respondent and its officials are trying to complete the said

project as soon as possible and there is no malafide intention on part of him to not get the delivery of project to the allottees.

19. The respondent submitted that due to stagnation, sluggishness, down fall in real estate market, due to demonetization 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.

20. The respondent 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.

21. The respondent submitted that the said project is a continuance business of him and it will be completed by the year 2021. The current status of the project is that

superstructure work of the tower is almost constructed upto 22nd Floor. The complainant has booked at 3rd Floor, in tower G which is almost constructed. 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.

22. The respondent submitted that it is pertinent to mention here 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

23. With respect to the **first issue**, authority is of the view that the project is registered with the authority vide registration no. **182 of 2017 dated 04.09.2017 valid upto 31.12.2021**. As per the statement of the respondent and pictures provided by the respondent, the superstructure of the tower in which unit of the complainant is situated is almost complete and

respondent undertakes to offer the possession to the complainant by June 2020. Therefore, keeping in view the present status of the project and interest of the other allottees the refund at present stage of the project will hamper the completion of the project. Hence, prayer of the complainant for refund of the amount paid by him cannot be allowed.

24. However, as per clause 24 of buyer developer agreement, the possession of the flat shall be given by April, 2017 plus six months grace period. The clause regarding the possession of the said unit is reproduced below:

"24. Possession of unit

The possession of the unit shall be given by April, 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."

25. Accordingly, the due date of handing over possession is by 31.10.2017. Hence, the period of delay in delivery of possession is computed as 1 year 5 months and 30 days till the date of decision. The authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the

Real Estate (Regulation and Development) Act, 2016. The complainant made a submission before the authority under section 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil its obligation.

26. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Therefore, as per section 18(1) proviso read with rule 15 of the Rules *ibid*, the complainant is entitled to prescribed rate of interest i.e. State Bank of India highest marginal cost of lending rate plus two percent, per annum.
27. With respect to **second issue** raised by the complainant, the authority came across clause c of the agreement dated 26.08.2014 which is reproduced as under:

The developer shall pay equated monthly instalment every month to buyer for the housing loan taken by buyer against

the aforesaid property starting from February, 2017 till the offer of possession is made by the developer to the buyer.

28. According to which the respondent undertaken to pay the EMI's for loan taken by the complainant from February, 2017 till the offer of possession is made by the developer to the buyer. Therefore, the respondent has violated the terms of the agreement dated 26.08.2014 as he has stopped making payments of EMI after October, 2018. However, the respondent has not offered the possession till date. Hence, the respondent is liable to pay the EMI's.

Findings of the authority

29. 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.
30. 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.

31. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.

32. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

33. As per clause 24 of the buyer's developer agreement dated 26.08.2014 for unit no. R0380G00303, tower G, in project "Supertech Hues" Sector 68, Gurugram, possession was to be handed over to the complainant by April 2017 + 6 months grace period which comes out to be 31.10.2017. however, the respondent has not delivered the unit in time. Complainant has

already paid Rs. 88,47,257/- to the respondent against a total sale consideration of Rs. 93,74,720/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 31.10.2017 as per provision of the section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

34. However, the complainant has further alleged that since October 2018 the respondent- builder has stopped paying the pre-EMIs to the bank under subvention scheme. Counsel for respondent assured the authority that the respondent will re-start paying all the pre-EMIs alongwith interest within a period of one month and regular pre- EMIs shall be paid by the respondent in future.

Decision and directions of the authority

35. 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 both parties in the interest of justice and fair play:

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from due date of possession i.e. 31.10.2017 till the handing over of the possession to the allottee within period of 90 days from the date of this order.
 - ii. Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10th of subsequent month.
 - iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for delay period.
 - iv. The promoter shall not charge anything from the complainant which is not part of the agreement.
36. The order is pronounced.
37. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.04.2019

Judgement uploaded on 28.05.2019