

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

**Complaint No. : 182 of 2019**  
**First date of hearing : 30.04.2019**  
**Date of Decision : 30.04.2019**

1. Mr. Anju Gupta  
2. Mrs. Sweety Gupta  
Both R/o. 928, Ground Floor, Sector – 47 **Complainants**  
Gurugram

Versus

M/s Supertech Ltd.  
Address: Supertech Hues, Badhshapur,  
Sector – 68, Sohna Road, Gurugram **Respondents**

**CORAM:**

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

**APPEARANCE:**

Shri Anuj Gupta and Smt. Sweety Gupta **Complainant in Person**  
Shri Rahul Yadav **Advocate for the complainant**  
Shri Rishabh Gupta **Advocate for respondent**

**ORDER**

1. A complaint dated 23.01.2019 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. Anju Gupta and Mrs. Sweety Gupta, against the respondents M/s Supertech Ltd. on account of violation of the clause 1 of possession of the unit clause of buyer developer agreement

dated 08.07.2015 in respect of flat/unit no. A-402, 4<sup>th</sup> Floor in Tower-A, admeasuring 1180 sq. ft. in the project 'Supertech Hues' at sector 68, Gurugram for not handing over possession on the due date i.e. by January 2019 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since, the builder buyer's agreement dated 08.07.2015 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: -

- **DTCP license no.:- 106 and 107 of 2013 dated 26.12.2013**
- **DTPC license validity: - 25.12.2017**
- **RERA Registration: - Registered vide no. 182 of 2017**

1.	Name and location of the project	"Supertech hues", Village Badshahpur, Sector 68, Gurugram.
2.	Nature of real estate project	Group housing project
3.	Flat/unit no.	0402, 4 <sup>th</sup> Floor, Tower A
4.	Unit area	1180 sq. ft.
5.	Date of completion as per RERA registration certificate.	<b>31.12.2021</b>
6.	Date of booking	18.10.2013
7.	Date of execution of builder developer agreement	08.07.2015
8.	Payment Plan	Construction Linked Plan <b>(Pg. 16 of the complaint)</b>
9.	Total consideration	Rs. 1,06,04,360/-
10.	Total amount paid by the	Rs. 82,65,333/-

	complainants till date	(as per receipt information, pg. no. 59 of the complaint)
11.	Due date of delivery of possession as per possession clause 1 of BBA i.e. July 2018 + 6 months' grace period (as per pg. no. 24 of the complaint)	<b>January 2019</b>
12.	Delay in handing over possession till date I.e. 30.04.2019	3 months approx.
13.	Penalty clause (clause 2 of the builder buyer's agreement)	Rs. 5/- per sq. ft. of super area

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 buyer developer agreement dated 08.07.2015 is available on record for the aforesaid flat/unit no. A0402 according to which the possession of the said unit is to be delivered by January, 2019. The project has been delayed and the respondents have failed to fulfil its statutory 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 30.04.2019. The case came up for hearing on 30.04.2019. The reply has been filed by the respondent which has been perused.

**Facts of the complaint:**

6. The complainant submitted that, the fact of the complaint are that the complainants booked a residential unit in the respondents' project, namely 'Supertech Hues' at sector 68,

Gurugram. The complainant was induced to book the flat by showing brochures and various advertisement material depicting that the project will be developed as a state of art of art project and shall be one of its kind. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

7. The complainant submitted that they booked a flat with the respondent and paid the first payment of sum of Rs. 6,00,000/- on 17.10.2013 against the unit no. M-0102 in Tower-M. Late on the complainants got shifted to unit no. A-402 in Tower-A having super area of 1180 sq. ft. vide application dated 22.05.2015.
8. The complainants submitted that the buyer developer agreement was executed on 08.07.2015 by virtue of which respondent allotted unit no. A-402 on 4<sup>th</sup> Floor in Tower-A to the complainants. The complainants had taken a loan from IIFL for purchasing the flat in question.
9. The complainants submitted that they have paid a total sum of Rs. 82,65,333/- as and when demand was raised by the respondent. The balance payment was to be made at the time of offer of possession. In terms of the buyer developer agreement, the respondent was to complete the project by July, 2018 with a further grace period of 6 months.
10. The complainant submitted that they made regular visit at the project site and observed that there are serious quality issues with respect to the construction carried out by the respondent. The flats were sold by representing that the same will be luxurious apartment however, all such representations seem

to have been made in order to lure complainant to purchase the flats at extremely high prices. There are various deviations from the initial representations. The structure, which has been constructed on face of it is extremely poor quality.

11. The complainant submitted that the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The date of possession was July, 2018 and the same expired way long and the grace period of 6 months have already expired, but the construction of the project has not been completed till date.

#### **Issues to be decided**

- i. Whether the respondents is liable for unjustifiable delay in construction and development of the project in question?
- ii. Whether the respondent is liable to refund the amount deposited by the complainant along with prescribed interest?

#### **Reliefs sought**

Direct the respondents to refund Rs. 82,65,333/- paid by the complainant along with interest as prescribed by this authority from the date when payment were made till realisation of the amount in full.

#### **Respondents' reply**

12. 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

4.9.2017. The authority has issued the 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.

13. 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 by 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 and 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 buyer developer agreement executed by the complainant and respondent.
14. The respondent further submitted that 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 that due to orders 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. 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.

15. The respondent submitted that the relief of refund claimed by 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.
16. The respondent submitted that the 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 complainants have booked at 4th floor, in tower A 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.
17. The respondent submitted that the respondent denied that the complainants visited the spot and observed that there are serious qualities issues with the respect to the constructions carried out by the respondent. No such representation as alleged were ever made by the respondent. The construction is going on and good quality building material has been taken for construction.

### Determination of issues

18. As regards **first and second issue** raised by the complainants, from the perusal of record, the authority came across that as per the terms of buyer developer agreement dated 08.07.2015 for subject unit no. A-402, Tower - A 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 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 08.07.2015 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.”*

Since, the project is registered and the revised date of delivery of possession is mentioned in the RERA registration certificate as 31.12.2021. 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 of other allottees as well who wishes to continue with the project. There is a delay of 3 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 w.e.f. January 2019 till offer of possession as per the provision of section 18(1) of the Ac ibid.

### **Findings of the authority**

19. 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. 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.
20. Project is registered with the authority and the revised date of handing the offer of possession is 31.12.2021. No refund is allowed. Since project stands delayed, as such buyer is entitled to receive late delivery charges at prescribed rate of interest i.e. 10.70% per annum till the offer of possession for the amount which he has already paid.

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

***“Section 34 (f) Function of Authority –***

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”*

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 which is reproduced below:

***“Section 37. Powers of Authority to issue directions***

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”*

**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 is directed to hand over the possession of the said unit on or before 31.12.2021 as per RERA registration certificate.
- (ii) Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iii) The respondent is directed to pay delayed possession charges for every month of delay at prescribed rate i.e. 10.70% p.a. from January, 2019 (due date of delivery of possession) till the handing over of the possession to the complainant.
- (iv) Interest on the due payments from the complaint shall be charged at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- (v) The interest so accrued at the prescribed rate of interest i.e. 10.70% p.a. from January 2019 (due date of delivery of possession) till the date of this order be paid within 90 days and thereafter monthly interest be paid before 10<sup>th</sup> of subsequent month.

23. The order is pronounced.

24. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: 30.04.2019

Judgement Uploaded on 30.05.2019



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GURUGRAM