

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

Complaint No. : 2527 of 2018
Date of First hearing : 24.04.2019
Date of Decision : 24.04.2019

1. Shri Bappa Biswas
2. Smt. Amrita Biswas
Both R/o H.no. - 2, Anand Nagar,
Boh Road. Lucky Complex, Ambala Cantt., **..Complainants**
Haryana - 133021

Versus

1. M/s Supertech Ltd. (through its Director)
Regd. Office at: 1114, 11th Floor, Hemkunt
Chamber, 89, Nehru Place, New Delhi- **...Respondents**
110019
2. India bulls Housing Finance Limited
Office at: M- 2 and 3, First Floor ,
Connaught Place, New Delhi - 110001

CORAM:

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

APPEARANCE:

Shri Chetan Dhingra Advocate for the complainants
Shri Rishabh Gupta Advocate for respondent no. 1
Shri Gaurav Dua Advocate for respondent no. 2

ORDER

1. A complaint dated 21.01.2019 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 complainants, Shri Bappa Biswas and Smt. Amrita Biswas against the promoter M/s Supertech Ltd. (through its Director) and India Bulls Housing Finance Limited, on account of violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the allotment letter/ buyer developer agreement has been executed on 18.03.2015 for the unit no. "R045T300801" 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 part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.

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

1.	Name and location of the project	"Hill Town", Situated in Residential Colony, Sector 2, Sohna Road, Gurugram
2.	Unit no.	R045T300801
3.	Unit area	1275 sq. ft
4.	Registered/ not registered	Registered (286 of 2017)

5.	Revised date of handing over possession as per RERA registration certificate	30.06.2021
6.	Nature of real estate project	Residential plotted colony
7.	DTCP license	124 of 2014 dated 23.08.2014
8.	Date of booking	18.02.2015 (as per allotment letter)
9.	Date of allotment letter	18.03.2015
10.	Payment plan	Subvention plan
11.	Total cost	Rs. 70,45,450/-
12.	Total amount paid by the complainants	Rs. 65,44,193/- (as alleged by the complainant)
13.	Due date of delivery of possession from the date of execution of allotment letter i.e 18.03.2015	June 2019 Clause 25 of allotment letter i.e the possession of the allotted floor/ apartment shall be given by December 2018 with an extended period of 6 months.
14.	Delay in handing over the possession	Complaint is premature
15.	Penalty clause as per buyer developer agreement	Clause 25 : Rs. 5 per sq. ft. of area of apartment per month

4. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainants and the respondents.
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 24.04.2019. The reply has been filed by the respondent no. 1 and the same has been perused by the authority.

Facts of the complaint

6. The complainant submitted that the complainants Mr. Bappa Biswas and Mrs. Amrita Biswas are law abiding citizens of India and are residing at H. No. 02, Anand Nagar, BOH Road, Lucky Complex, Ambala Cantt, Haryana 133021. The complainants with the intention to provide residential apartment for themselves and their family have booked residential flat in the project of the respondent company in the year 2015.
7. The complainant submitted that the respondent no. 1 M/s Supertech Limited herein is a company incorporated under the provision of the Companies Act 1956, and engaged in the business of housing construction and other allied services in and around NCR and Delhi and all major cities of India. It is submitted that the respondent no. has its registered office at 1114, 11th Floor, Hemkunt Chamber, 89, Nehru Place, New Delhi 110019. That respondent no. 2 Indiabulls Housing Finance Limited is also a company incorporated under the provision of the Companies Act 1956, and engaged in

providing housing finance. It is submitted that the respondent no. 2 is having its registered office at M - 62 & 63, First Floor, Connaught Place, New Delhi - 110001. It is submitted that the complainants had made the booking of the apartment in the project of the respondent company under a subvention scheme. The respondent no.1 company failed to make the payments of the Pre-Emi for few months in the year 2018 and later on issued an illegal and arbitrary letter dated 29.11.2018. The respondent no.2 maliciously and considerably amended the agreed provisions of the MOU between the parties. The complainants are aggrieved by the actions of the respondent company and therefore, have preferred the present complaint for refund and interest.

8. The complainant submitted that the respondent no. 1 company made several representations of its project to the complainants, alluring them to book an apartment in its project "Hill Town" situated in residential plotted colony, Sector 2, Sohna Road, Haryana. The respondent no.1 had made several claims pertaining to the architecture and the landscape of the project and thereby lured the complainants to consider the booking of an apartment in its project. It offered several amenities to the complainants. It is pertinent to mention that the main highlight of the project was the

subvention scheme. The agents of both the companies had represented to the complainants that their project was approved by the respondent no.2 which is financing this project. They further lured the complainants with a special scheme, whereby, the complainants won't be required to make any payment to the respondent no.2 which will make the payment on behalf of the complainants to the respondent no.1. The complainants will only be required to shell out a small amount at the time of booking and rest of the payments shall be made by the respondent no.2 to the respondent no.1. The complainants will only come into picture once the possession is delivered. In this manner, the complainants won't have to share any financial burden whereas by making a payment of a small amount, they will be becoming the owner of the apartment. Their EMI will begin only upon possession. This was the main highlight of the scheme. The complainants were lured by the respondent company owing to the above scheme and hence made the booking.

9. The complainant submitted that relying on the assurances made by the Respondent Company and allured by the rosy picture painted by the respondent, through its agents and representatives, the complainants vide their application dated

18.02.2015 booked a flat in the project of the respondent company details of which have been provided hereunder:

Apartment No.: 0801

Floor: 8th

Tower: T3

Super Area: 1275 Sq. Ft.

10. The complainant submitted that the complainants made the payment of the booking amount of Rs 5,00,000/- (Rupees Five Lakhs only) and the apartment/flat was allotted to the complainants as is clear from the receipts. The Flat no. 801 is mentioned on the receipts thereby allotting the apartment to the complainants only upon the payment of the booking amount.
11. The complainant submitted that thereafter allotment letter was signed between the parties herein. The details of the apartment are reproduced below:-

Apartment/unit No.: R045T300801

Floor: 8th

Tower: T3

Super Area: 1275 Sq. Ft.

Date of Booking-18.02.2015

Type- 2BHK +2 TOI

Possession- Dec 2018

Payment plan- Subvention

Total Consideration- Rs 70,45,450/-

12. The complainant submitted that under the allotment letter served on complainants, the complainants were constrained to accept various arbitrary and unilateral clauses made in favor of the respondent company. That there was no scope of attaining any mutuality at that time as the complainants had already paid a considerable amount towards the booking of the apartment and could not risk their allotment.
13. The complainant submitted that the total sale consideration of the apartment was Rs. 70,45,450/- (Rupees Seventy Lakhs Forty-Five Thousand Four Hundred and Fifty only). The complainants had already made the payment of the considerable amount to the respondent no.1 company even before signing of the agreement. When the complainants perused the terms of the agreement, it became clear that the same were totally unilateral and arbitrary. There was no provision for the compensation to be paid to the

complainants whereas; the respondent company had reserved the right to charge 2% interest per month in case of delay in payment. in case of delay in payment. Nevertheless, the respondent company would receive the entire payment through subvention and hence there was no scope for any delay in payment. The highlights of the payment plan, as assured and guaranteed by the respondent company subvention scheme. The catch of the plan/scheme was basically that the bank/financial institution would release major proportion of the consideration on behalf of the complainants to the respondent no.1. The respondent no.1 would be benefited by the receipt of the considerable amount without even reaching the relevant milestone and they would only have to make the payment of the small Pre-EMI which is around Rs 11,000/- to Rs 12,000/- to the bank on the loan availed by the complainants. The scheme seems fine until and unless each party abides by its promises but the respondent no.1 company has stopped the payment of the EMI due to which the entire burden has shifted upon the complainants.

14. The complainant submitted that as per the terms and conditions the respondent no. 1 had the authority to impose an exorbitant rate of interest on the complainants to the tune of 2% per month on delayed payments or even cancel the

allotment of complainants and returning the balance payment after deducting the earnest money i.e. 10% of the total price of the floor/apartment in case of default and whereas no compensation was stipulated for the complainants in case of delay in possession of the flat/apartment. The relevant portion of Clause 3 from the Allotment Letter is reproduced here for the sake of the perusal of this Tribunal:

“3. If the payment is not received within the stipulated period or in the event of breach of any terms and conditions of the provisional allotment, the allotment shall be deemed as cancelled and balance payment will be refunded without any interest and after deduction of the earnest money i.e. 15 % of the total price of the Floor/Apartment. After cancellation, the Allottee(s) shall be left with no lien, right, title, interest or any claim of whatsoever nature in the said allotted floor/apartment and the Developer/Owner shall, thereafter be free to resale and/or deal with the said Floor/Apartment in any manner whatsoever as its sole discretion. In case the Developer, in its absolute discretion, allow any latitude in the payment of the delayed Installments, interest @ 2% per month or for any part of a month will be charged for the period of delay in making the

payment. In case amount paid by the Allottee(s) is less than the aforesaid amount of 15% of the total cost of the Floor/Apartment, the entire money paid by the Allottee(s) shall be forfeited by the Developer.”

15. The complainant submitted that the said clause regarding the 15% being the earnest money was later on modified by the respondent no.1 company vide amendment letter dated 18.03.2015 which is also annexed herewith as Annexure C-1

16. The complainant submitted that the possession of the apartment was promised latest by December 2018 with an extended period of six months to the complainants. The relevant paragraph of the agreement dated 18.03.2015 is being reproduced below:

“25. The possession of the allotted Floor/Apartment shall be given by December , 2018 with an extended period of 6(six) months.”

17. The complainant submitted that as part of the allotment agreement dated 18.03.2015, the complainants and the respondent no.1 further entered into a Memorandum of Understanding dated 18.03.2015 whereby, as per the scheme earlier offered by the respondent no.1 company, it was assured by the respondent no.1 to the complainants it shall

make the payment of the Pre-EMI till possession. It was also clear that the plan offered by the builder and accepted by the buyer was No EMI till possession plan. The scheme finds highlight in the Memorandum of understanding dated 18.03.2015 in the recital as well as terms. The relevant term no. (b) is reproduced below:-

“(b) That the tenure of this subvention scheme as approved by India Bulls Housing Finance Limited is 36 months. The Developer expects to offer possession of the booked unit to the Buyer by that time. However, if due to any reason, the possession offer of the booked unit gets delayed, then the Developer undertakes to pay the Pre EMI only to the Buyer even after 36 months. The payment of Pre-EMI shall continue till offer of possession with regard to the booked flat is issued to the Buyer.”

18. The complainant submitted that above scheme and its assurance as mentioned in the MOU dated 18.03.2015 was the reason that the complainants had made the booking of the apartment with the respondent no.1 company. The complainant had expected the respondent company to make the payments of the Pre-EMI until the possession of the apartment. It is submitted that the respondent company did

make the payments to the Bank regularly until April 2018 but thereafter, the installments were to be made directly to the buyer/complainants.

19. It is submitted that along with the allotment letter, the complainants entered into the tripartite agreement with the respondents. It is submitted that the agreement clearly states that the respondent no.2 had sanctioned a loan of Rs 57,93,188/- in favor of the complainants towards the sale of the apartment. The same also speaks about the liability assumed by the builder on behalf of the complainants to repay the loan. It is submitted that the Pre-EMI period was for the 36 months and thereafter, the EMI upon the loan was to resume.
20. The complainant submitted that coming April 2018, the complainants duly reminded the respondent company for the payment of installments of the EMI since the same were to be directly deducted from the account of the complainants as the subvention period had ended and the respondent no1 was to make the payment of the EMI now, directly in the account of the complainants.

21. It is submitted that the complainants made the following payments to the respondent as and when demanded and never defaulted in the payments.
22. Comprehensive Chart showing the payments made by the complainants: -

Comprehensive Chart showing the payments made by the complainants: -

S. No.	Particulars	Amount	Tax	Total
1	On booking	704545	20699	725244
2	on Building Plan approved within 30 days	4227270	124192	435146 2
3	on completion of ground floor	704545	28704	733249
4	on completion of 1st Floor	704545	29694	734239
TOTAL		6340905	203288	65441 93

23. It is submitted that the complainants till date has made payments of Rs 65,44,193/- (Rupees Sixty-Five Lakhs Forty-Four Thousand One Hundred and Ninety-Three only).
24. It is submitted that the real dispute between the parties started with the commencement of the present year in the

year Jan 2018 when the complainants requested the respondent company to make the payment of EMI until possession since the respondent company has failed to construct the project within the promised time frame. It is submitted that the complainants wrote an email dated 15.01.2018 whereby, the complainants requested the respondent to make the payment of the EMI until possession since the subvention was to end in April 2018.

25. It is submitted that the respondent company after the ending of the subvention period has been defaulting in the payments of the Pre-EMI to the complainants. The respondent company never paid the Pre-EMI on time and the complainants were constrained to issue several reminders to the respondent company in order to seek the cheques which should ideally be paid by the respondent no.1 without any fuss. It is the fault of the respondent company due to which the complainants have been constrained to make the payments of EMI each month without any sight of the possession. The respondent company no.1 themselves have been stating that the possession of the complainant's tower is not even due until June 2021 which is in clear contravention of the promises made in the agreement and MOU dated 18.03.2015.

26. It is submitted that since September, the respondent no.1 company has not paid any installment of Pre-EMI to the complainants despite several and innumerable requests. It is submitted that the complainants have been forced to make the payment of entire EMI from their own pockets which is a huge financial burden. Moreover, being a salaried employee, it is entirely impossible for the complainants to make the payment of around Rs 57,000/- to the bank and at the same time pay the monthly rental.
27. It is submitted that vide the allotment and agreement dated 18.03.2015 the respondent no.1 company had promised to deliver the possession by Dec 2018 and further promised to make the payment of Pre-EMI until possession. Had the respondent no.1 company abided by its promises, there would not have been such situation.
28. It is submitted that the complainant no.1 is a salaried employee and earns a fix amount. The complainants further reside on tenanted premises and are already burdened with the monthly rental each month. The dual burden of EMI and monthly rental is going beyond the ability of the complainants due to which they have been constrained to approach the present Hon'ble Tribunal seeking refund of

their paid amount along with prescribed rate of interest. Had the respondent company delivered the possession of the apartment, the complainants would have managed the loan since then they would not be burdened with the payment of the monthly rental. But the present situation is a precarious one. The monthly expenditure on rental and interest on loan is exceeding the salary of the complainants and thus, there is no other way than seeking exit from the project.

29. It is submitted that the RERA Act, 2016 clearly provides that the promoter shall be liable to abide by the promises as under the agreement of sale or any such other document. The provision 11(4) clearly stipulates the same which is as follows:-

(4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the

promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

30. It is submitted that the respondent no.1 is bound by the commitment to make the payment of the Pre-EMI to the respondent no.2 on behalf of the complainants or to the complainants directly as the case may and as this Hon'ble Tribunal may direct.

31. It is submitted that the provision 18(3) of the RERA Act, 2016 further entitles the complainant to seek the refund of their paid amount in case the promoter fails to discharge the obligations under the agreement to sale. In the present case, the respondent company no.1 has failed to make the payment of the Pre-EMI and therefore the complainants are entitled to seek refund of their money along with interest. The provision is reproduced below for reference:

“(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay

such compensation to the allottees, in the manner as provided under this Act.”

32. It is submitted that vide email dated 29th Nov 2018 the respondent company unilaterally and arbitrarily amended the MOU and agreement for allotment dated 18.03.2015 and decided that it shall not be making the payments of Pre-EMI to the allottees. The complainants were distraught since the complainants had availed the mentioned huge loan only on the assurance of the respondent no.1 company that it shall be making the payment of the Pre-EMI to the allottees. The unilateral action on the part of the respondent company was immediately refuted and replied by the complainants with the email of the same date. The complainants was misled by the respondent no.1 company during the entire course of their relationship and hence, the complainants have lost their faith in the respondent no.1 company and do not want to wait any longer for the possession of the apartment which has already been delayed. It is submitted that the respondent company had not only refused to make the payments of the PRE-EMI, they have also extended the date for the completion of the project until June 2021.

33. It is submitted that the clear request of the complainants to refund their paid amount, the respondent company has failed to make either the payment of the Pre-EMI or the refund the amount along with interest. Further, the respondent company has unilaterally extended the date of possession. Hence, the complainants have been constrained to file the present complaint for refund and interest.

34. It is submitted that this Hon'ble Authority may as per Section 18 of RERA, 2016 direct the respondent company to refund the amount paid by the complainants to the respondent along with prescribed rate of interest from the date of payment till the actual date of realization.

35. Issues raised by the complainants

The relevant issues as culled out from the complaint are as follows:

- I. Whether there has been failure on the part of the respondent in the delivery of the flat to the complainant within the stipulated time period?
- II. Whether there has been default on the part of the respondent no.1 company to abide by the obligations and promises in the agreement for sale (allotment letter and

MOU dated 18.03.2015) especially in view of the default in making the monthly payments of Pre-EMI?

- III. Whether the complainant is entitled to refund of their money along with compensation, and at what rate?

36. Relief sought

- I. Direct the respondent to refund the money paid by the complainant till dated Rs 65,44,193/- (Rupees Sixty-Five Lakhs Forty Four Thousand One Hundred and Ninety Three only) along with prescribed rate of interest from the date of payment till realization of the amount; and
- II. Direct the respondent to pay a sum of Rs. 50,000/- (Rupees Fifty Thousand only) as litigation expenses to the complainants; and
- III. May pass any other orders

Reply by respondent no.1

37. That the above captioned complaint is pending in this Hon'ble Authority.
38. The respondent submitted that the complaint filed by complainants is pre-mature, hence it is liable to be dismissed on this solely ground alone. As per Allotment Letter dated

18.3.2015, executed between the parties for allotment of unit No.801 Tower – T3 of project "**Hill Town**", the proposed possession date for the allotted unit was in the month of December 2018 and as per the agreed terms and conditions of the flat buyer agreement, a further grace period of 6 months was also agreed by the parties to the agreement, which comes will end up in June 2019, and prior to this no cause of action arose in favour of the complainant for filing the instant complaint. The clause 25 of the Allotment Letter is reproduced herein below :-

*25. The Possession of the allotted Floor/ Apartment shall be given by **December 2018** subject to force majeure conditions with an extended grace period of **6 (six) months** . The developer also agrees to compensate the Allottee (s) @ Rs. 5/- per sq. feet of area of the Floor/Apartment per month for any delay in handing over possession of the floor/ Apartment beyond the given promised period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier.*

39. That it is submitted that the project Supertech "Hill Town / Hill View High Rise" is registered before this Hon'ble Authority vide registration no. 97 of 2017 which is valid upto June 2021.
40. It is submitted that the complainant has not come with clean hands and has suppressed true and material fact before this Hon'ble Authority. Hence, the complaint may also be liable to be dismissed on this ground also.
41. It is submitted that it has been held in various authorities by Hon'ble Apex Court that 'If a complaint is a pre-mature, then it can either await maturity or be returned to the complainant for filing latter
42. It is submitted that it is therefore prayed that in the interest of justice, from the above facts and submissions , the complaint may kindly be rejected with heavy cost

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

43. With respect to the **first and third issue** raised in the complaint, as per clause 25 of allotment letter, the possession of the said unit was to be delivered by or before June 2019. The due date of possession of the said unit i.e. June 2019 is yet to come, so it is not in the interest of progress of project and even to protect the interest of other allottees who wish to continue with the project, refund at this stage cannot be allowed as this will hamper the project in question.
44. With respect to **second issue** raised by the complainant, as per the provisions of the Tripartite Agreement, the builder/respondent was supposed to pay pre-EMI to respondent no. 2 till the offer of possession as per MOU. However, the respondent has failed to pay the pre- EMIs to honour the TPA since 10th September 2018 to April 2019 as a result of which M/s Indiabulls herein respondent no. 2 has started deducting pre- EMIs from the account of the complainant which is cause of concern to the complainant. The respondent no.1 company is to abide by the obligations and promise in the MOU dated 18.03.2015. Therefore, as per MOU dated 18.03.2015, the respondent no.1 is liable to make monthly payments of Pre-EMI along with interest till offer of possession to respondent no. 2.

45. 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 by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation.

46. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

47. **Jurisdiction of the authority-** The authority has complete subject matter jurisdiction to decide the complaint regarding 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 & 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.

48. A plea has been made by Shri Gaurav Dua Advocate on behalf of M/s India bulls that they should be exempted from the proceedings of the matter. However, his argument/plea cannot be conceded as respondent no.2 is very much part of TPA. However, keeping in view the scenario of the case, M/s Indiabulls herein respondent no. 2 is exempted from the proceedings of the authority.

Decision and directions of the authority

49. 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:

- I. The respondent no. 1 is directed to abide commitments and to pay the pre-EMIs along with interest to respondent no. 2..

50. The complaint is disposed of accordingly.

51. The order is pronounced.

52. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.04.2019

Judgement uploaded on 11.06.2019