



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस गुरुग्राम, हरियाणा


**PROCEEDINGS OF THE DAY**


Day and Date	Thursday and 5.7.2018
Complaint No.	15/2018 case titled as Ms. Kanika Sharma versus M/s Supertech Ltd.
Complainant	Ms. Kanika Sharma
Represented through	Complainant in person
Respondent	M/s Supertech Ltd
Respondent Represented through	Shri Prashant Advocate for the respondent.


**Proceedings**

The counsel for the complainant made a statement that he is not appearing before the Authority for compensation but for fulfilment of the obligations by the Promoter as per The Real Estate (Regulation & Development) Act, 2016 for which he will be giving application.

The counsel for the respondent made a statement that the allottee shall be handing over the possession upto 31.12.2019. In the eventuality of failure of the promotor to give possession by this date, the allottee shall be refunded the amount received by the promoter alongwith the prescribed interest within 45 days from 31.10.2017. If the allottee intends to withdraw at that stage, if at all there are any dues against the allottee the interest amount shall be adjusted first against the dues and after satisfying the dues, the promoter shall make payment to the allottee before 10<sup>th</sup> of every coming month. The complaint is disposed of accordingly. Detail order will follow. The file be consigned to the Registry.

  
Samir Kumar  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
5.7.2018

  
Subhash Chander Kush  
(Member)

148/10-7-18

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

Complaint No. : 15 of 2018

Date of Institution : 12.02.2018

Date of Decision : 05.07.2018

Ms. Kanika Sharma

...Complainant

Versus

M/s Supertech Ltd., 1114, 11<sup>th</sup> Floor, Hemkunt  
Chambers, Nehru Place, New Delhi-110019

...Respondent

**CORAM:**

Dr. K.K. Khandelwal

Shri Samir Kumar

Shri Subhash Chander Kush

Chairman

Member

Member

**APPEARANCE:**

Ms. Kanika Sharma

Shri Prashant and Shri Utpal  
Kant

Complainant in person

Advocate for the respondent

**ORDER**

1. A complaint dated 12.02.2018 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 complainant (Ms. Kanika Sharma) against the promoter (M/s Supertech Ltd.) on account of violation of clause 25 of the builder-buyer agreement executed on 10.07.2014 for unit no. M/0101 in project "Supertech Hues" for not giving possession on the due



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*[Signature]*



date which is an obligation of the promoter under section 11 (4) (a) of the act ibid.

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

1.	Name and location of the project	Supertech Hues, sector 68, Gurugram
2.	Unit No.	M/0101
3.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	₹ 600,000.00/-
4.	Total consideration amount as per agreement dated 10.07.2014	₹ 1,10,56,240/-
5.	Total amount paid by the complainant upto date	₹ 69,66,131/-
6.	Percentage of consideration amount	Approx. 77 %
7.	Date of delivery of possession as stated in buyer agreement	42 months i.e. April 2017
8.	Delay in possession (excluding grace period of 6 months)	1 year 3 months approx.
9.	Penalty Clause as per builder buyer agreement	clause 25 i.e. Rs.5/- per square ft.
10.	Cause of delay in delivery of possession	Force majeure



3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for unit no. M/0101, sector 68, Gurugram in the said project according to which the possession of the



aforesaid unit was to be delivered by April 2017. The promoter/respondent has neither delivered the possession of the unit no. M/0101 as on date to the purchaser nor has paid any compensation i.e. @ Rs. 5 Sq. ft of the super area said unit per month for the period of the such delay as per builder buyer agreement dated 10.07.2014. Therefore, the promoter has not fulfilled their committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 11.04.2018. The case came up for hearing on 11.04.2018, 26.04.2018, 17.05.2018 and 05.07.2018. The reply has been filed on behalf of the respondent which has been perused and the same has been found to be vague and evasive. They have further argued that that parties are bound by the terms and conditions of the agreement.
5. During hearings, oral arguments were advanced by both the parties in order to prove their contentions. It was stated that there is only 40% of the construction work done in the project. So, it is not possible for the respondent company to handover the possession till the given date. The learned counsel for the respondent did not rebut the arguments advanced by the complainants.





6. As per clause no. 25 of the agreement for sale, the possession of the flat was to be handed over within 42 months with a grace period of 6 months from the date of execution of buyer agreement. As per date of execution of buyer agreement, the due date of possession was in October 2017. As far as the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. mt. per month, it is held to be one-sided as held in para 181 of the judgment in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, 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."*

7. Keeping in view the present status of the project and intervening circumstances, the complainant wished to continue with the project. As per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the complainants, interest at the prescribed rate for every month of delay till the handing over the possession as the promoter has not fulfilled its obligation. The complainants



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

8. The complainant submitted before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**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.*

It was 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:

**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.*



9. The counsel for the respondent submitted before the authority that they would be handing over the possession to the allottee by 31.12.2019.



10. Considering the above averments, in the interest of natural justice, the authority is of the view that in the eventuality of failure of the promoter to give possession by the stated date,



the allottee shall be refunded the amount received by the promoter along with the prescribed interest within 45 days from 31.12.2019.

11. It is further held that the respondent is directed to give interest as prescribed from the date of possession i.e. 31.10.2017 till the actual date of handing over possession. Respondent is further directed to give interest on amount on 10<sup>th</sup> of every month.
12. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the Adjudicating Officer.
13. The order is pronounced
14. Case file be consigned to the registry.



(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram