

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

Complaint no. : 3755 of 2019
First date of hearing: 08.11.2019
Date of decision : 08.01.2020

1. Ms. Preeti Bhardwaj
2. Shri. Sushil Bhardwaj
Both Resident Of: H. No. 264D, 1st Floor, **Complainants**
Mayfield Garden, Sector-51,
Gurugram

Versus

M/s Supertech Limited
Regd. Office: 1114, 11th Floor, **Respondent**
Hemkunt Chamber 89,
Nehru Place
New Delhi-110019

CORAM

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

APPEARANCE:

Shri Arun Kumar Roy Advocates for the
Shri Sheetanshu Shekhar complainants
Shri. Rishabh Gupta Advocate for the respondent
Ms. Pushpa Dabas AR of the respondent

ORDER

1. The present complaint dated 11.09.2019 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No	Heads	
1.	Project Name and location of the project	"Supertech Hues" at Sector 68, Gurugram
2.	Project Area	32.83 acres (As per RERA registration)
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	106 & 107 of 2013 Dated 26.12.2013 valid up to 25.12.2017
5.	Name of licensee	Sarv Realtors Pvt. Ltd.
6.	RERA Registered/not registered	Registered vide no. 182 of 2017 dated 04.09.2017
7.	RERA registration valid Upto	31.12.2021 (Page no. 3 of reply)



8.	Unit no.	R0380E01003/ Flat No.1003, 10 th floor Tower no. B (Page no. 38 of complaint)
9.	Unit measuring	1180 Sq. Ft. (Page no. 38 of complaint)
10.	Date of execution of Buyer Developer agreement	10.09.2014 (Page no. 37 of complaint)
11.	Payment plan	Possession Linked Plan (Page no. 38 of complaint)
12.	Total sale consideration	₹88,50,800/- (Page no. 38 of complaint)
13.	Amount paid by the allottee	₹27,50,421/- as per payment plan (Page no.79 of complaint)
14.	Due date of delivery of possession of this order Note: as per clause E (24) on page no. 45 of Buyer Developer Agreement: 42 months i.e. by August 2017 + 6 months grace period	28.02.2018
15.	Delay in handling over possession till date of this order	1 year 10 months 11 days

16.	Status of project	Ongoing
17.	Specific relief sought (in specific terms)	To direct the respondent to pay delayed possession interest at prescribed rate of interest per annum for delayed period in handing over the possession and to handover the flat after complete construction.

3. As per clause E (24) of the Buyer Developer agreement dated 28.08.2014, the possession was to be handed over by April 2017 plus further grace period of 6 months to cover any unforeseen circumstances. The possession period clause was subject to timely payment of all the installments and other dues which the allottee(s) has to strictly abide to. Clause E (24) of the Buyer Developer agreement is reproduced herein below:

“E. POSSESSION OF UNIT

25. *The possession of the unit shall be given in 42 months i.e. by **August 2017** or extended period as permitted by the agreement. However, the developer hereby agrees to compensate the buyer(s) @ ₹5/ per sq. ft. of super area of the unit per month for any delay in handing over 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, to cover any unforeseen circumstances. Upon receiving the offer letter of possession, the*

buyer(s) shall within time stipulated, take possession of the unit by executing sale deed, undertaking, maintenance agreement and any other documents as prescribed and required. If the buyer(s) fails to take possession within time period prescribed, the developer shall be entitled to cancel the agreement and forfeit the 15% of the total cost/price of the unit and refund the balance amount to the buyer(s) without any interest. The developer may decide to condone the delay by buyer(s) in taking the possession of the unit in deserving cases, on the condition that buyer(s) shall pay to the developer penal of sale deed of allotted unit, whichever is later. The rate of holding charges shall be equal to the rate of delay penalty as offered by the developer in case of delay in possession. These charges shall be in addition to the maintenance or any other charges as provided under the buyer developer agreement. Further, the buyer(s) shall have no right or claim in respect of any item of work which the buyer(s) may allege as not completed or in respect of any design or specification."

4. The respondent has utterly failed in fulfilling their obligation to deliver the unit as per the Buyer Developer agreement and failed to offer possession in terms of section 18 of the Act read with the Rules. Hence, this complaint for the reliefs detailed herein above.
5. On the date of hearing the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. According to the respondent the delay in construction was for the reasons stated in the reply which were beyond its control.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint is being decided based on these undisputed documents and submissions made by the parties.
8. The Authority based on information, submissions made by the parties and the documents filed by both the parties is of considered view that there is no need of further hearing in the complaint.

Arguments heard.

9. The Authority observes that the Act is to protect the rights of the stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
10. That by virtue of clause E (24) of Buyer Developer agreement executed between the parties on 10.09.2014, possession of the booked unit was to be delivered within stipulated time i.e. 31.08.2017 plus grace period of 6 months to cover any unforeseen circumstances. Therefore, the due date of handing over of possession comes out to be 28.02.2018. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the Buyer Developer

agreement dated 10.09.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 01.03.2018 till offer of possession of the booked unit as per the proviso to section 18(1)(a) of the Act read with Rule 15 of the Rules.

11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act: -
- i. The respondent is directed to pay interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 28.02.2018 till the offer of possession of the booked unit.
 - ii. The respondent to pay arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of each subsequent month.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent shall not charge anything from the complainant which is not part of the Buyer Developer agreement.

- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest@ 10.20% by the promoter which is same as is being granted to the complainant in case of delayed possession charges.
- v. Complaint stands disposed of. File be consigned to registry.

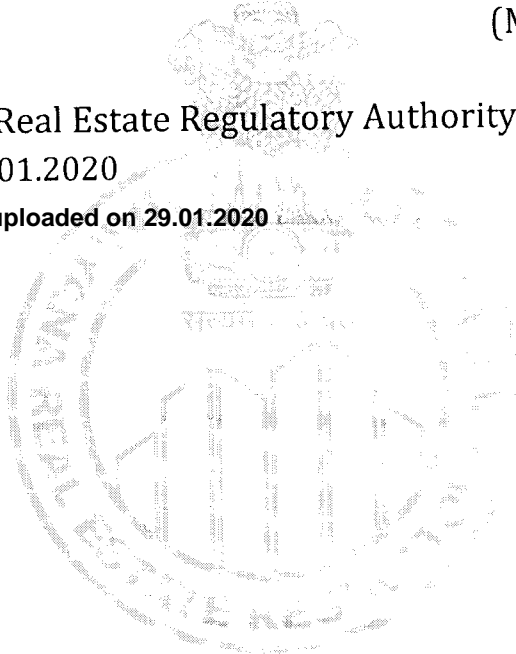
Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.01.2020

Judgement uploaded on 29.01.2020



HARERA
GURUGRAM