

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

Complaint no. : 2837 of 2019
First date of hearing: 08.11.2019
Date of decision : 08.01.2020

Amarjit Mehta

Address: 101-B, Hamilton Court,
(Near Galleria Market),
DLF City Phase 4,
Gurugram-122009
Also, at: C-4/4121, Vasant Kunj

Complainant

Versus

M/s Supertech Limited
Address: 1114, 11th Floor,
Hemkunt Chamber 89,
Nehru Place
New Delhi-110019

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri K.P. Pandey Advocate for the complainant
Shri. Rishabh Gupta Advocate for the respondent
Ms. Pushpa Dabas AR of the respondent

ORDER

1. The present complaint dated 05.08.2019 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 | "Araville", Sector- 79, Gurugram. |
| 2. | Project Area | 10.00 acres (as per land schedule given in DTCP license) |
| 3. | Nature of the project | Group Housing Colony |
| 4. | DTCP license no. and validity status | 37 of 2011 dated 26.04.2011 valid till 25.04.2019 |
| 5. | Name of licensee | Tirupati BuildPlaza Private Limited |
| 6. | RERA registered/not registered | Registered vide no. 16 of 2018 Dated 13.10.2018 (Tower No. A to F) |
| 7. | RERA registration valid Upto | 31.12.2019 |



| | | |
|-----|---|---|
| | | Note: - already expired but the respondent has applied for extension of one year and the status of RERA extension application is pending. |
| 8. | Unit no. | C/1503, 15 th floor, Tower C (Page no 30 of complaint) |
| 9. | Unit measuring | 1945 Sq. Ft. (Page no 30 of complaint) |
| 10. | Date of execution of Buyer Developer agreement | 24.10.2013 (Page no. 29 of complaint) |
| 11. | Payment plan | Construction Linked Plan (Page no. 31 of complaint) |
| 12. | Total sale consideration | ₹1,08,77,125/- (Page no. 31 of complaint) |
| 13. | Amount paid by the allottee | ₹1,04,55,975/- (Page no. 61 of complaint) |

| | | |
|-----|--|--|
| 14. | Due date of delivery of possession Note: as per clause E (1) of the flat buyer's agreement: by 31.10.2015 + 6 months of further period to cover any unforeseen circumstances. [Page no. 36 of complaint] | 30.04.2016 |
| 15. | Delay in handing over possession till date of this order | 3 year 8 months 9 days (Possession not offered till date) |
| 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 (1) of the flat buyer's agreement, the possession was to be handed over by October 2015 plus

further period of 6 months to cover any unforeseen circumstances. The possession period clause was subject to timely payment by the Allottee and the Allottee agrees to abide by the same in this regard. Clause E (1) of the flat buyer agreement is reproduced herein below:

“E. POSSESSION OF UNIT

*(1) The possession of the allotted unit shall be given to the Allottee(s) by the company by **October 2015**. However, this period can be extended due to unforeseen circumstances for a further grace period of **6 months** to cover any unforeseen circumstances. The possession period clause is subject to timely payment by the Allottee(s) and the Allottee(s) agrees to abide by the same in this regard.”*

4. The respondent has utterly failed in fulfilling their obligation to deliver the unit as per the flat buyer’s agreement and has 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, authenticity of which is not in dispute. Hence, the complaint can be decided based on these undisputed documents and the submission made by the parties.
8. The Authority based on information, explanation, other submissions made, 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 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 (1) of flat buyer's agreement executed between the parties on 24.10.2013, possession of the booked unit was to be delivered within stipulated time that October 2015 plus grace period of 6 months to cover any unforeseen circumstances. Therefore, the due date of handing over of

possession comes out to be 30.04.2016. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 24.10.2013 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. 01.05.2016 till the offer of possession of the booked unit as per the proviso to section 18(1)(a) of the Act read with rules 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. 01.05.2016 till the offer of possession of the booked unit.
 - ii. The 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 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 the part of the Flat Buyer's 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 the same as is being granted to the complainant in case of delayed possession charges.
 - v. Complaint stands disposed of.
 - vi. 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