

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

Complaint no. : 4927 of 2019
First date of hearing: 08.01.2020
Date of decision : 08.01.2020

Jitin Singhal

Address: House. No. 961,
Sector-15, Part-II
Gurugram-122001

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 Sukhbir Yadav
Shri. Rishabh Gupta
Ms. Pushpa Dabas

Advocate for the complainant
Advocate for the respondent
Authorised Representative on
behalf of respondent

ORDER

1. The present complaint dated 06.11.2019 has been filed by the complainant/allottee 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 Buyer Developer 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.	Registered/not registered	Registered vide no. 182 of 2017 dated 04.09.2017
7.	RERA registration valid Upto	31.12.2021



8.	Unit no.	B/1501, 15 th floor Tower B (Page no. 37 of complaint)
9.	Unit measuring	1180 Sq. Ft. (Page no. 37 of complaint)
10.	Date of execution of Buyer Developer agreement	12.07.2014 (Page no. 36 of complaint)
11.	Payment plan	Construction Linked Plan (Page no. 38 of complaint)
12.	Total sale consideration	₹88,03,600/- (Page no. 37 of complaint)
13.	Amount paid by the allottee	₹75,68,032/- as per outstanding statement as annexure P-8 (Page no.54 of complaint)
14.	Due date of delivery of possession of this order Note: as per clause E (25) of the Buyer Developer agreement: By April 2017 + 6 months of grace period (Page no. 44 of complaint)	31.10.2017
15.	Delay in handling over possession till date of this order	2 year 2 months 8 days (Note: The possession has not been offered as on 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 (25) of the Buyer Developer agreement, 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 is subject to timely payment by the allottee and the allottee is under obligation to abide by the same in this regard. Clause E (25) of the Buyer Developer agreement is reproduced below:

“E. POSSESSION OF UNIT

25. *The possession of the unit shall be given in 42 months i.e. by **April 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. Further, On the date of hearing, the presence of respondent proves the service of notice. However, the respondent failed to file reply to the complaint.

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 and 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 is of the view 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 (25) of Buyer Developer agreement executed between the parties on 12.07.2014, possession of the booked unit was to be delivered within stipulated time i.e 30.04.2017 plus grace period of 6 months to cover any unforeseen circumstances. Therefore, the due date of handing over possession comes out to be 31.10.2017. Accordingly, it is the failure on the part of the respondent/promoter to fulfil his

obligations and responsibilities as per the Buyer Developer agreement dated 12.07.2014 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. 01.11.2017 till 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 this order and issue the following 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. 01.11.2017 till offer of possession of the booked unit;
 - ii. The respondent is directed to pay arrears of interest accrued so far 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 subsequent month;
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and 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 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