

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

Complaint no. : 4387 of 2019
First date of hearing : 08.01.2020
Date of decision : 08.01.2020

1. Mr. Anup Goel
2. Mrs. Poonam Goel
Both r/o I-91, 2nd floor
South City-2, Sohna Road,
Gurugram 122018(Haryana)

Complainants

Versus

M/s Supertech Limited.
Regd. Office: 1114, 11th floor,
Hemkunt Chambers, 89, Nehru
Place, New Delhi- 110019

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Aman Vivek Advocate for the complainants
Sh. Rishabh Gupta Advocate for the respondent
Ms. Pushpa Dabas A.R of the respondent company

ORDER

1. The present complaint 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



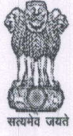
section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

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

S.No.	Heads	Information
1.	Project name and location	"Hill Town/Hill Crest" in Sector- 02, Sohna Road Gurugram.
2.	Project area	18.37 acres [as per RERA Registration]
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	124 of 2014 dated 23.08.2014 valid till 22.08.2019
5.	Name of licensee	M/s Dolphin Build well Private Limited and others
6.	RERA Registered/ not registered	Registered vide no. 258 of 2017 Dated 03.10.2017
7.	RERA registration valid up to	02.10.2020
8.	Unit no.	R1450N470D, 4 th floor, Tower N470/N470 [Page 19 of complaint]
9.	Unit measuring	1375 sq. ft.
10.	Date of execution of Allotment Letter	31.07.2017 [Page 18 of complaint]

	[Note; Apartment buyer agreement is not recorded]	
11.	Payment plan	Construction linked payment plan [Page 19 of complaint]
12.	Total consideration as per payment plan	Rs.44,01,957/- [Page 19 of complaint]
13.	Total amount paid by the complainants as per Outstanding statement dated 03.08.2019	Rs. 19,76,167 /- [Page 52 of complaint]
14.	Due date of delivery of possession as per clause L (26) of the Allotment letter: by October 2018 + 6 months grace period. [Page 23 of complaint]	30.04.2019
15.	Date of Tripartite agreement dated	10.10.2017 [Page 35 of complaint]
16.	Delay in handing over possession till date of this order	8 months 8 days [Note: - Possession has not been handed over so far]
17.	Status of the project	Ongoing
18.	Specific relief sought	To direct the respondent to deliver the possession along with prescribed rate of interest per annum for delayed period in handing over the possession

3. As per clause L (26) of the Allotment letter, the possession was to be handed over by October, 2018 plus further period of 6 months. But the promoter/respondent failed to handover the

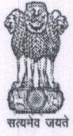


possession to the complainant. Clause L (26) of the Allotment letter which is reproduced herein below:

"L. 26 POSSESSION OF ALLOTTED FLOOR/APARTMENT: -

*The possession of the allotted floor/Apartment shall be given by **OCT 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. 5.00/- (Five rupees only)** per (Sq. ft.) of area of the Floor/Apartment per month for any delay in handing over possession of the Floor/Apartment beyond the given promised plus the grace period of **6(Six)** months and up to the Offer Letter of possession or actual physical possession whichever is earlier."*

4. The respondent has utterly failed in fulfilling their obligation to deliver the unit as per the Allotment letter and failed to offer the possession in terms of section 11(4) (a) and 18 of the Act read with Rules. Hence, this complaint for the inter alia reliefs, detailed 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. The respondent through his reply has submitted that there was no intentional delay in the construction on the part of the respondent and delay was due to the reasons detailed 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 can be decided on the basis of these undisputed documents and submission made by the parties.
8. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainants 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 stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also 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 L (26) of Allotment letter executed between the parties on 31.07.2017, possession of the booked



unit was to be delivered within time i.e. 31.10.2018 plus grace period of 6 months to cover any unforeseen circumstances. Therefore, the due date of handing over possession comes out to be 30.04.2019. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the Allotment letter dated 31.07.2017 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 01.05.2019 till offer of possession of the booked unit as per the provision of 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. w.e.f. 01.05.2019 on amount deposited by the complainant till the offer of possession;
- (ii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;



- (iii) The respondent is directed to pay arrear of interest accrued so far within 90 days from the date of this order and thereafter subsequent interest to be paid by the 10th of each succeeding month;
- (iv) Interest on due payment from the complainants 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) The respondent shall not charge anything from the complainant which is not the part of the Allotment Letter.
- (vi) Complaint stands disposed of.
- (vii) File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 08.01.2020

Judgement Uploaded on 31.01.2020