

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

Complaint no. : 2617 of 2019
First date of hearing: 08.11.2019
Date of decision : 08.01.2020

Mr. Rajesh Chhabra
Address: -Plot No. 2014,
Sector-12, Part-1, Sonipat,
Haryana (131001)

Complainant

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. Ravi Atri Advocate for the complainant
Sh. Rishabh Gupta Advocate for the respondent
Ms Pushpa Dabas A.R of the respondent company

ORDER

1. The present complaint dated 26.06.2019 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 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	"Supertech Hues", 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 of 2013 and 107 of 2013 dated 26.12.2013 valid till 25.12.2017
5.	Name of licensee	Sarv Realtors Private Limited
6.	RERA Registered/ not registered	Registered vide no. 182 of 2017 dated 04.09.2017 (Tower No. A to H, K, M to P and T to V, W)
7.	RERA registration valid up to	31.12.2021
8.	Unit no.	R0380A00202, 2 nd floor, Tower A [Page 15 of complaint]
9.	Unit measuring	1180 sq. ft.
10.	Date of execution of buyer developer agreement	17.09.2014 [Page 14 of complaint]



11.	Payment plan	Possession Linked payment plan [Page 16 of complaint]
12.	Total consideration as per payment plan	Rs.89,68,800/- [Page 16 of complaint]
13.	Total amount paid by the complainant as per receipt information dated 18.05.2019 (annexure-E, page no. 44 of complaint and submitted by the complainant)	Rs.78,76,292/-
14.	Tripartite Agreement dated 03.10.2016 [page 36 to 41 of complaint]	Cannot be ascertained [since the agreement is blank]
15.	Due date of delivery of possession as per clause E (24) of the buyer's Developer agreement: April 2017 + 6 months grace period [Page 22 of complaint]	31.10.2017
16.	Delay in handing over possession till date of this order	2 years 2 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: i. to pay Pre-EMIs since 01.02.2019 to ICICI bank along with interest; ii. to pay delayed possession interest along with prescribed rate of interest per annum with handing over possession; iii. to pay Pre-EMI before 30 th of every month;



3. As per clause E (24) of the buyer developer agreement, the possession was to be handed over by April 2017 plus further period of 6 months, to cover any unforeseen circumstances. Clause E (24) of the Buyer Development Agreement is reproduced below:

"E. 24 POSSESSION OF UNIT

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) @ ₹5.00/ 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 of 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 in its reply 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.
8. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainant 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 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 E (24) of buyer developer agreement executed between the parties on 17.09.2014, possession of the booked unit was to be delivered within stipulated time i.e. by 30.04.2017 plus grace period of 6 months whichever is earlier, 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 of the respondent/promoter to fulfil his obligations and responsibilities as per the buyer developer agreement dated 17.09.2014 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. 01.11.2017 till offer of possession 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. 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 w.e.f. 01.11.2017 on the amount deposited by the complainant till the offer of possession;



- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iii) The respondent is directed to pay arrears of interest accrued so far 01.11.2017 till date of order to the complainant within 90 days from the date of this order and subsequent interest till offer of possession to be paid by the 10th of each succeeding month;
- (iv) Interest on due payment 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) The respondent shall not charge anything from the complainant which is not part of the Buyer Developer Agreement.
- (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