



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.	R0380H02401, 24 th floor, Tower H [Page 22 of complaint]
9.	Unit measuring	1180 sq. ft.
10.	Date of execution of buyer developer agreement	28.12.2016 [Page 21 of complaint]



11.	Payment plan	Possession linked payment plan [Page 23 of complaint]
12.	Total consideration as per payment plan	Rs.31,80,655/- [Page 23 of complaint]
13.	Total amount paid by the complainant as per receipt information(annexure-II, page no. 17&18 of complaint)	Rs.31,57,575/-
14.	Due date of delivery of possession as per clause E (24) of the Buyer Developer Agreement: by March 2019 + 6 month's grace period. [Page 29 of complaint]	30.09.2019
15.	Delay in handing over possession till date of this order	3 months and 8 days [Note: -Possession has not been handed over so far]
16.	Status of the project	Ongoing
17.	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 E (24) of the buyer developer agreement, the possession was to be handed over by March 2019 plus further grace period of 6 months. However, any delay in the project execution or its possession caused due to force majeure clause conditions and/or any judicial pronouncement shall be

excluded from the aforesaid possession period. Clause E (24) of the Buyer Developer Agreement is reproduced hereunder:

"E 24 POSSESSION OF UNIT

*The possession of the unit shall be given by **MARCH, 2019** or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @ Rs. **5.00/- (five rupees only)** 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 up to the offer letter of possession or actual physical possession whichever is earlier. However any delay in project execution or its possession caused due to force majeure conditions and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount will be calculated after the lapse of the grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the Allottee till such date, at the time of final account statement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e.*

No EMI till offer of possession, Subvention scheme, Assured return etc. and who honour their agreed payment schedule and make the timely payment of due instalments and additional charges as per the payment plan given in Allotment Letter. ”

4. The respondent has utterly failed in fulfilling its obligation to deliver the unit as per the Buyer Developer Agreement and has failed to offer possession in terms of section 11(4) (a) and Section 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 has filed the application for rejection for rejection of complaint on the ground of being pre-mature, which has been dismissed by the authority.
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 is being 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 complainant 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 E (24) of buyer developer agreement executed between the parties on 28.12.2016, possession of the booked unit was to be delivered within stipulated time i.e. by 31.03.2019 plus grace period of 6 months. However, any delay in the project execution or its possession caused due to force majeure clause conditions and/or any judicial pronouncement shall be excluded from the aforesaid possession period. Therefore, the due date of handing over possession comes out to be 30.09.2019. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities



as per the buyer developer agreement dated 28.12.2016 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. 01.10.2019 till offer of possession of the booked unit as per the provision of section 18(1) 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 w.e.f. 01.10.2019 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 interest accrued so far from the date of this order to the complainant within 90 days from the date of this order and subsequent interest 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 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 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