

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

**Complaint no. : 4928 of 2019**  
**First date of hearing: 08.01.2020**  
**Date of decision : 08.01.2020**

1. Mrs. Manisha Garg  
Address: - House No. 961,  
Sector-15, Part-II, Gurugram  
122001

**Complainant**

**Versus**

M/s Supertech Limited.  
Corporate office: B28-29,  
Sector-58, Noida-201301

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Sukhbir Yadav  
Sh. Rishabh Gupta  
Ms Pushpa Dabas

Advocate for the Complainant  
Advocate for the respondent  
A.R of the respondent company

**ORDER**

1. The present complaint 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 complainant, 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 the 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	<b>Registered vide no. 182 of 2017 dated 04.09.2017</b> <b>(Tower No. A to H, K, M to P and T, V, W)</b>
7.	RERA registration valid up to	31.12.2021
8.	Unit no.	1602, 16 <sup>th</sup> floor, Tower B
9.	Unit measuring	1180 sq. ft. [super area]
10.	Date of execution of buyer developer agreement	12.07.2014 [Page 36 of complaint]
11.	Payment plan	Construction linked payment plan [Page 38 of complaint]



12.	Total consideration as per payment plan	Rs.88,03,600/- [Page 38 of complaint]
13.	Total amount paid by the complainant as per outstanding statement dated 04.06.2019 (annexure-IP-8, page no. 54 of complaint)	Rs.75,68,032/-
14.	Due date of delivery of possession (as per clause E (25) of the buyer's Developer agreement: by April 2017 + 6 months grace period and up to the Offer letter of possession or actual physical possession which is earlier to cover any unforeseen circumstances.) [Page 44 of complaint]	31.10.2017
15.	Delay in handing over possession till date to till this order	2 years 3 months 8 days (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 (25) of the buyer developer agreement, the possession was to be handed over by April 2017 plus further grace period of 6 months. But the promoter/respondent failed to handover the possession to the complainant. Clause E (25)

of the Buyer Developer Agreement is reproduced herein below: -

*"E. POSSESSION*

*25 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/ 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 of delivery of 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 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. Notice to the promoter/respondent through speed post and through E-mail address ([headoffice@supertechlimited.com](mailto:headoffice@supertechlimited.com)) was sent the delivery report of which is annexed. This is a clear

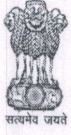


evidence that the service was completed. Despite service the annexed with the file. Promoter/respondent has failed to file a reply within stipulated time period.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint is being decided on the basis of the 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 are heard

9. The Authority has observed 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 (25) of buyer developer agreement executed between the parties on 12.07.2014, possession of the booked unit was to be delivered within time i.e. by 30.04.2017



plus grace period of 6 months. 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, 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 the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 31.10.2017 till actual handing over of the 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. w.e.f. 01.11.2017 on amount deposited by the complainant till offer of possession;
- (ii) 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 10<sup>th</sup> of each succeeding months;



- (iii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iv) Interest on due payment from the complainant shall be charged at the prescribed rate of interest @10.20% p.a. by the respondent which is same as in 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 23.01.2020