

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

**Complaint no. : 93 of 2019**  
**First date of hearing : 09.05.2019**  
**Date of decision : 08.01.2020**

1. Mr. Dixit Alagh  
Address: - C-2683, Sushant  
Lok, Phase-I, Gurugram  
122001(Haryana)

**Complainant**

**Versus**

1. M/s Supertech Limited.  
Regd. office: 1114, 11<sup>th</sup> floor,  
Hemkunt Chambers, 89, Nehru  
Place, New Delhi- 110019  
Through its Chairman and  
Managing Director.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Amit Kumar 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 15.01.2019 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 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	"Araville", Sector- 79, Gurugram.
2.	Project area	10.00 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	37 of 2011 dated 26.04.2011 valid till 25.04.2019
5.	Name of licensee	M/s Tirupati Buildplaza Private Limited
6.	RERA Registered/ not registered	<b>Registered vide no. 16 of 2018 Dated 13.10.2018 (Tower No. A to F)</b>
7.	RERA registration valid up to	31.12.2019 Note: - already expired but the respondent has applied for extension of one year and the status of RERA extension application is pending.
8.	Unit no.	R032E00301, 3 <sup>rd</sup> floor, Tower E



		[Page 35 of complaint]
9.	Unit measuring	1295 sq. ft.
10.	Date of execution of flat buyer's agreement	10.09.2012 [Page 32 of complaint]
11.	Payment plan	Construction linked payment plan [Page 35 of complaint]
12.	Total consideration as per payment plan	Rs.80,51,958/- [Page 36 of complaint]
13.	Total amount paid by the complainants as per payment reminder letter dated 02.11.2015 (alleged by complaint)	Rs.73,55,142/- [Page 60 of complaint]
14.	Due date of delivery of possession as per clause G (21) of the flat buyer's agreement: by November 2014 + 6 months of further period to cover any unforeseen circumstances. [Page 40 of complaint]	31.05.2015
15.	Delay in handing over possession till date to this order i.e. 08.01.2020	4 years 7 months 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 G (21) of the flat buyer's agreement, the possession was to be handed over by November 2014 plus

further grace period of 6 months to cover any unforeseen circumstances. The possession period clause is subject to timely payment by the Allottee(s) and the Allottee (s) agrees to abide by the same in this regards. Clause G (21) of the promoter buyer agreement is reproduced below:

“G. POSSESSION

21 POSSESSION OF UNIT

*The possession of the allotted unit shall be given to the Allottee(s) by the company by NOV, 2014.*

*However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months to cover any unforeseen circumstances.*

*The possession period clause is subject to timely payment by the Allottee(s) and the Allottee(s) agrees to abide by the same in this regard.”*

4. The respondent has utterly failed in fulfilling its obligation to deliver the unit as per the flat buyer’s agreement and failed to offer 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 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 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 G (21) of flat buyer's agreement executed between the parties on 10.09.2012, possession of the booked unit was to be delivered within stipulated time i.e. November, 2014 plus grace period of 6 months to cover any unforeseen circumstances. The possession period clause is subject to timely payment by the Allottee(s) and the Allottee (s) agrees to abide by the same in this regards. Therefore, the due date of handing over possession comes out to be 31.05.2015. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 10.09.2012 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. 01.06.2015 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. for every month of delay w.e.f. 01.06.2015 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 to the complainant within 90 days from the date of this order and subsequent interest to be paid by the 10<sup>th</sup> 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 flat Buyer's 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 05.02.2020