



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**PROCEEDINGS OF THE DAY**


Day and Date	Tuesday and 10.7.2018
Complaint No.	65/2018 case titled as M/s Plaza Fincap Pvt. Ltd. Versus M/s Supertech Ltd.
Complainant	M/s Plaza Fincap Pvt. Ltd.
Represented through	Shri S.C.Goyal - complainant in person.
Respondent	M/s Supertech Ltd.
Respondent Represented through	Ms. Oshin Advocate for the respondent. Shri Rishu Kant Sharma, Advocate for respondent No.2.


**Proceedings**

The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

The complainant has filed Declaration/Undertaking today. Arguments heard. As per the Local Commission report, it seems that divergent of fund has been done for which separate enquiry is to be set up by the Registration Branch to do the needful done. As the promoters have submitted affidavit that possession shall be handed over within six months i.e. 19.12.2018. This affidavit has been submitted by them in respect of the apartment in Tower no.803 allotted to the complainant in this case. This commitment is given irrespective to the fact that the declaration made by them for completion of project. In case of failure of the respondent to handover the possession before 19.12.2018, the respondent shall be liable to pay amount received by them in respect of this apartment alongwith interest at the prescribed rate within 45 days after the expiry of the date indicated for giving possession. In case the apartment is handed over by due date as indicated by the respondent i.e.19.12.2018 then the respondent shall be liable to pay interest for every month of delay at the prescribed rate i.e. 10.15% till handing over the possession. The order is pronounced. Complaint is disposed of. Detail order will follow. File be consigned to the Registry.

Samir Kumar  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
10.7.2018

  
Subhash Chander Kush  
(Member)

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016की धारा 20के अर्तगत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016का अधिनियम संख्यांक 16

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

**Complaint No. : 65 of 2018**  
**Date of Institution : 27.03.2018**  
**Date of Decision : 10.07.2018**

Plaza Fincap Pvt. Ltd., E-9(GF), Saket  
New Delhi-110017

**Complainant**

Versus

1. M/s Supertech Ltd,1114, Hemkunt Chambers. 89 Nehru Place,New Delhi-110019
2. Tirupati Buildplaza Pvt. Ltd. ,804 Tower-A, Signature Towers, South City, Gurgaon-122001

**Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri S.C. Goyal  
Ms. Oshin  
Shri Rishukant Sharma

Complainant in person  
Advocate for the respondent 1  
Advocate for the respondent 2

**ORDER**

1. A complaint dated 27.03.2018 was filed under Section 31 of The Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of The Real Estate (Regulation & Development) Rules, 2017 by the complainant company (Plaza Fincap Pvt.





Ltd.) against promoters (M/s Supertech Ltd. & Tirupati Buildplaza Pvt. Ltd.) on account of violation of clause 21 of builder buyer's agreement executed on 26.04.2013 for unit no. R032D00803 in the project "Araville" for not giving possession on due date which is an obligation under section 11 (4) (a) of the act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the Project	Araville, Sector -79, Village Naurangpur Gurugram
2.	Unit No.	R032D00803
3.	Booking amount paid by the buyer to the builder/promoter/company vide agreement dated 26.04.2013	Rs. 7,19,000/-
4.	Total consideration amount as per agreement dated 26.04.2013	Rs. 89,18,500/-
5.	Total amount paid by the complainant upto date	Rs. 85,81,953/-
6.	Percentage of consideration amount	Approx. 96.23 Percent
7.	Date of delivery of possession from the date of execution of builder buyer agreement	Nov, 2015
8.	Delay of number of months/ years upto date	31 Months
9.	Penalty Clause as per builder buyer agreement dated 26.04.2013	Clause 23 i.e. Rs.5/- per square ft of BBA for first 6 months, Rs. 7.5/- for next 6 months and thereafter Rs. 10/-
10.	Cause of delay in delivery of possession	Implementation of GST, RERA and demonitization.



3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record in the Unit detailed as above according to which the possession of the aforesaid unit was to be delivered by November 2015. Whereas, the respondent company has not delivered the possession till 10.07.2018. The promoter has not fulfilled its committed liability as on date. Neither they have delivered the possession of the unit no. R032D00803 as on date to the purchaser nor has paid any compensation i.e. @ Rs. 10 Sq. ft of the super area of the said unit per month for the period of the such delay till the actual possession is given.
4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared before the Authority after issuance of notices. The case came up for hearing on 17.04.2018, 03.05.2018, 17.05.2018, 31.05.2018, 19.06.2018 & 10.07.2018. The reply has been filed on behalf of the respondents which has been perused. The respondent no.1 has admitted the fact of delay of possession in its reply but submitted that the delay occurred due to unforeseen circumstances beyond the control of the respondent including the effect of demonetization, imposition of G.S.T. etc. The





respondent no.1 has also submitted that active implementation of schemes of govt. like NAREGA & JNNURM and shortage of supply of construction material throughout Haryana, pursuant to order of Suprema Court of India in the case Deepak Kumar Versus State of Haryana has also adversely affected the construction schedule of the project. The respondent no. 1 further submitted also submitted that the construction is going on at the site & the company is utilizing all its resources to complete the project.

5. The respondent No. 2 have also filed the reply and contended that they are not a necessary party in the complaint as there is no privity of contract between the complainant company and respondent no 2. It has been stated by respondent no. 2 that no document has been signed by them with the complainant company and the project in question is being developed by respondent no. 1 alone. The complainant company filed the rejoinder to rebut the reply filed by the respondent no.1 in which the complainant company reaffirmed the contentions given in the complaint.

6. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The complainant company submitted that the respondents have violated the terms of the builder buyer agreement by not



handing over the possession of the unit to the complainant company in time. It was also submitted that the respondents have violated the provision of section 18 (1) of the act ibid in not awarding the interest and compensation to them. It is submitted that the complainant is entitled for the interest on the amount paid by them for the delayed possession of the flat.

7. On the other hand, the learned counsel for the respondent no.1 vehemently contested and controverted the submission made by the complainant's side. By and large the submissions and the arguments of the learned representative for the respondent no. 1 are on the lines of the stand taken by the them in their written reply. The grounds for delay of project given by the respondent no. 1 in the arguments as well as in the written reply are not acceptable as the buyer is not at fault.
8. On 17.05.2018, Mr. Suresh Kumar Verma, retired executive engineer was appointed as local commissioner to visit the project in question and to verify the actual status of the construction of Tower D and E. The local commissioner submitted his report and reported that the progress of project is financially achieved by 70% and according to physical progress of the project, status of completion is about 70%. The respondent no. 1 was asked to file the affidavit regarding the date of handing over of possession of the flat to the





complainant company. The respondent no. 1 filed the affidavit dated 19.06.2018 that they will hand over the possession to the complainant company within six months.

9. As per Clause 23 of agreement for sale, the possession of the flat was to be handed over upto November 2015. But the respondent no. 1 have failed to fulfil the terms of the agreement and have not offered possession till date. The clause regarding the possession of the said flat is reproduced below:

*"23. The company hereby agrees to pay the delay penalty per month to the Allottee(s) on the basis of the super area of unit for any delay in handing over the possession/offer of possession whichever is earlier beyond the given date plus grace period of 6 months, to cover any unforeseen circumstances. The penalty for the first six months, post grace period, shall be Rs.5/- sq.ft. per month. Similarly, the penalty shall be Rs.7.50/- sq.ft. per month for the next six months and finally it shall be Rs.10/- sq.ft. per month thereafter. The penalty amount will be calculated after the lapse of the grace period and shall be paid/adjusted at the time of issuance of the letter of offer of possession of the unit by the company. The penalty clause will be applicable to only those allottee(s) who honour the payment schedule and make the payment of all his/her due installments, additional charges/PLC etc as per the payment plan agreed upon in the allotment letter."*



10. The complainant put forth before the court that the promoter has already received 96.23% of the total sale consideration amount and has utilized the same towards the construction of

project as well as towards his own financial benefit. As far as the penalty clause of BBA is concerned which provides that penalty for first six months, post grace period, shall be Rs.5/- sq. ft. per month. Similarly, the penalty shall be Rs.7.50/- sq. ft. per month for next six months and finally it shall be Rs.10/- sq. ft. per month thereafter, it has been held to be one sided as held in para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors.** (W.P 2737 of 2017), the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

11. As the possession of the flat was to be delivered by November 2015 as per the clause referred in para 9, the authority is of the view that the promoter has violated section 11(4)(a) of The Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*"11.4 The promoter shall—*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the*





*association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*

12. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

**"34 (f) Function of Authority -**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."*

It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

13. However, keeping in view the present status of the project and intervening circumstances, the complainant company cannot be allowed to withdraw from the project as it will adversely affect the



project of the project as well as rights of other allottees. As per proviso to section 18(1) of the Act, the complainant company do not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession. Section 18(1) is reproduced below:

**18 (1) Return of amount and compensation -**

1. *If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*
  - (a) *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
  - (b) *due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*



14. Considering the stage of construction in this project, the Authority is of the view that in case refund is allowed in the present complaint, it will hamper the completion of the project as project is approximately 70% complete and will be completed fully within next 6 months. The refund of deposited amount will also have adverse effect on the other allottees.
15. On the basis of above averments, the Authority, exercising powers vested in it under section 37 of The Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent:
- (i) The respondent no. 1 is duty bound to hand over the possession of the flat in question to the complainant within 6 months i.e 19.12.2018 as per affidavit dated 19.06.2018 submitted by the respondent no. 1.
  - (ii) The respondents shall pay the prescribed rate of interest for every month of delay from due date of possession i.e November 2015 till the handing over of possession as per Rule 15 of The Haryana Real Estate (Regulation & Development) Rules, 2017 which provides that interest payable shall be the State Bank of India highest marginal cost of lending rate plus two percent i.e 10.45% p.a.





- (iii) In case the respondent no. 1 fails to handover the possession by the committed completion date i.e. 19.12.2018, then the respondents shall be liable to pay the entire amount received by them in respect of this apartment alongwith interest at the prescribed rate within 45 days after the expiry of the indicated date of possession.
- (iv) That the respondents shall clear the liabilities of interest mentioned in sub para (ii) within 90 days from the date of decision that is 10.07.2018 and thereafter shall make the payment regularly to the complainant till the handing over of possession.
- (v) That if there is any payment due towards the complainant company, they will also pay the same interest as prescribed for the respondents and not according to the terms of the builder buyer's agreement.


16. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.




17. The order is pronounced.

18. Case file be consigned to the registry.



  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

10.07.2018

Haryana Real Estate Regulatory Authority, Gurugram



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