

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

Complaint no. : 3034 of 2019
First date of hearing : 08.11.2019
Date of decision : 08.01.2020

Mr. Rajesh Kumar Sharma
S/o Sh. Bihari Lal
Address: - Lilac 1st floor,
Building No. 39, 2nd floor,
Sector-49, Gurugram

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. Rajesh Kumar Sharma Complainant in person
Sh. Neeraj Maheshwari 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 14.08.2019 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	"Hill Town/Hill Crest" in Sector- 02, Sohna Road Gurugram.
2.	Project area	18.37 acres [as per RERA Registration]
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	124 of 2014 dated 23.08.2014 valid till 22.08.2019
5.	Name of licensee	M/s Dolphin Build well Private Limited and others
6.	RERA Registered/ not registered	Registered vide no. 258 of 2017 Dated 03.10.2017
7.	RERA registration valid up to	02.10.2020
8.	Unit no.	R1450N383B, 2 nd floor,

		Tower B [Page 23 of complaint]
9.	Unit measuring	1350 sq. ft.
10.	Date of execution of buyer's agreement	N.A
11.	Allotment Letter	20.06.2016 [page 23 of complaint]
12.	Payment plan	Subvention linked payment plan [Page 24 of complaint]
13.	Total consideration as per payment plan	Rs.54,00,000/- [Page 24 of complaint]
14.	Total amount paid by the complainants as per receipt information alleged by complaint	Rs.6,54,490/- [Page 72to77 of complaint]
	Indian Bulls Home Loan amount as per statement of account dated 09.07.2019	Rs.45,11,974/- [Page 63to66 of complaint]
	Total amount	Rs.51,66,464/-
15.	Due date of delivery of possession as per clause L (26) of the allotment letter: by October 2018 + 6 month's grace period	30.04.2019 [Page 31 of complaint]
16.	Delay in handing over possession till date to this order	8 months and 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 interest per annum which money are paid by complainant from

		<p>the date of actual physical possession</p> <p>ii. to hand over the possession within the suited time period</p> <p>iii. to pay pre-EMI to India Bulls HFC with late fees since April 2019 to till date</p>
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3. As per clause L (26) of the allotment letter, the possession was to be handed over by October 2018 plus further grace period of 6 months and up to the offer Letter possession or actual physical possession whichever is earlier. Clause L (26) of the Allotment Letter is reproduced below:

"L. 26 POSSESSION OF ALLOTTED FLOOR/APARTMENT

*The possession of the allotted floor/Apartment shall be given by **OCT, 2018** subject to force majeure conditions with an extended grace period of **6(Six)** months. The developer also agrees to compensate the Allottee(s) @ **Rs. 5.00/- (Five rupees only)** per (Sq. ft.) of area of the Floor/Apartment per month for any delay in handing over possession of the Floor/Apartment beyond the given promised plus the grace period of **6(Six)** months and up to*

*the Offer Letter of possession or actual physical possession
whichever is earlier."*

4. The respondent has utterly failed in fulfilling their obligation to deliver of the unit as per the allotment letter and failed to offer the 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. 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 can be decided on the basis of these undisputed documents.
8. The Authority on the basis of information, 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 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 L (26) of allotment letter executed between the parties on 20.06.2016, possession of the booked unit was to be delivered within stipulated time i.e. by 31.10.2018 plus grace period of 6 months to cover any unforeseen circumstances. Therefore, the due date of handing over possession comes out to be 30.04.2019. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the allotment letter dated 20.06.2016 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. 01.05.2019 on amount of Rs. 6,54,490/- 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. w.e.f. 01.05.2019 on amount of Rs. 6,54,490/- 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 arrear of interest accrued so far within 90 days from the date of this order and thereafter 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 Allotment letter.
- (vi) Complaint stands disposed of.
- (vii) File be consigned to registry.

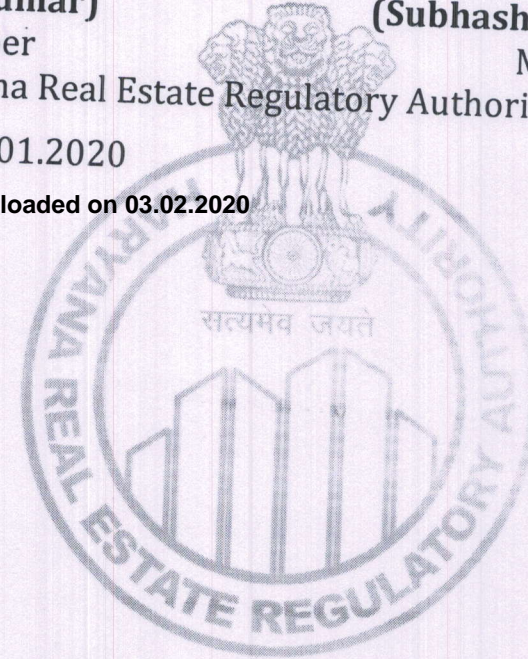

(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.01.2020

Judgement Uploaded on 03.02.2020


(Subhash Chander Kush)
Member



HARERA
GURUGRAM