

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

Complaint no. : 2878 of 2019
First date of hearing : 22.10.2019
Date of decision : 08.01.2020

1.Mr. Madhur Saxena
2.Mrs. Swati Saxena

Address: - Both r/o House No.1620,
Sector-4, Gurugram

Complainants

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. Madhur Saxena &
Mrs. Swati Saxena

Complainants in person

Sh. Rishabh Gupta
Ms Pushpa Dabas

Advocate for the respondent
A.R of the respondent company

ORDER

1. The present complaint dated 12.07.2019 has been filed by the complainants/allottees 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 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.	1204, 12 th floor, Tower F [Page 33 of complaint]
9.	Unit measuring	1180 sq. ft.
10.	Date of execution of buyer developer agreement	02.04.2015 [Page 32 of complaint]
11.	Payment plan	Subvention payment plan [Page 34 of complaint]
12.	Total consideration as per payment plan	Rs. 85,89,051/- [Page 34 of complaint]
13.	Total amount paid by the complainants as per receipt information alleged by complaint	Rs. 8,76,343/- [Page 26,27&30 of complaint]
	Indian Bulls Home Loan amount as per statement of account dated 23.04.2019	Rs.70,80,000/- [Page 88to92 of complaint]
	Total amount paid by the complaint	RS. 79,56,343/-
14.	Due date of delivery of possession as per clause E (24) of the buyer's Developer agreement: by July 2018 + 6 months grace period and up to the Offer letter of possession or actual physical possession which is earlier. [Page 40 of complaint]	31.01.2019
15.	Delay in handing over possession till date of this order	11 months 8 days [Note: Possession not handed over so far]
16.	Status of the project	Ongoing

17.	Specific relief sought	<p>To direct the respondent: -</p> <ol style="list-style-type: none"> i. to pay interest per annum on amount paid by the complainant from the date of payment till actual physical possession; ii. to pay pre-EMI paid by the complaint from December 2018 to July 2019 along with prescribed interest also all additional Pre EMIs interest paid by the complainants; iii. to pay the difference in actual Per-EMIs paid and Pre-EMIs given by the respondent; iv. to pay all the unpaid future Pre-EMIs as post- dated cheques (PDCs) dated first day of each month till December 2021; v. to pay the default penalty for each default of Pre-EMIs paid by complainants;
-----	------------------------	---

3. As per clause E (24) of the buyer developer agreement, the possession was to be handed over by July, 2018 plus further

period of 6 months and up to the offer letter of possession and actual physical possession whichever is earlier. 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 Development Agreement is reproduced hereunder:

"E. 24 POSSESSION OF UNIT

*The possession of the unit shall be given by **JULY 2018** 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 their obligation to deliver the unit as per the buyer developer 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 can be 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 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 (24) of buyer developer agreement executed between the parties on 02.04.2015, possession of the booked unit was to be delivered within stipulated time i.e. by 31.07.2018 plus grace period of 6 months and up to the offer letter of possession and actual physical possession whichever

is earlier. Therefore, the due date of handing over possession comes out to be 31.01.2019. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the buyer developer agreement dated 02.04.2015 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 complainants is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 01.02.2019 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 from the due date of possession i.e. 01.02.2019 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 31.01.2019 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


(Subhash Chander Kush)
Member

HARERA
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.01.2020
GURUGRAM
Judgement Uploaded on 03.02.2020