

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 19.7.2018
Complaint No.	255/2018 case titled as Mr. Kuldeep Kumar Pandit V/s M/s Supertech Limited
Complainant	Mr. Kuldeep Kumar Pandit
Represented through	Complainant in person
Respondent	M/s Supertech Limited
Respondent Represented through	Ms. Oshin, Advocate for the respondent.

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 prayed that he wants refund of the deposited amount alongwith interest. The learned counsel for the respondent has submitted that they will give the possession of the project in July 2020 but the complainant he shall be well within his right to seek refund of the entire amount alongwith prescribed interest for every month of delay. The complainant agreed to take the possession subject to interest on delay of possession. The promoter shall pay interest for every month of delay till handing over of the possession at the prescribed rate i.e. 10.15% subject to correction depending upon the existing maximum lending rate. Interest shall be paid to the complainant before 10th of each month. The first payment of interest shall be made for the month of August 2018 and 10th of September 2018. In case the complainant wants to visit the site then he will be allowed by the promoter otherwise it will be treated as violation of the Act and orders of the authorities. The complaint is disposed of accordingly. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
19.7.2018

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

Complaint No. : 255 of 2018
Date of Institution : 14.05.2018
Date of Decision : 19.07.2018

1. Kuldeep Kumar Pandit, R/o F-126, Suncity,
Sector 54, Golf Course road, Gurgaon

...Complainant

Versus

1. M/s Supertech Ltd, 1114, Hemkunt
Chambers, 89 Nehru place, New Delhi
110019

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Kuldeep Pandit
Ms. Oshin

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 14.05.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants (Mr. Kuldeep Kumar Pandit) against the promoter (M/s Supertech Ltd.) on account of violation of Clause 24 of the builder-buyer agreement executed on 08.11.2016 for unit no. B-2202 in the



project "Supertech Hues" for not giving possession on the due date which is an obligation of the promoter 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	Supertech Hues, Sector -68, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	B-2202, Tower B
3.	Registered/ Not Registered	Registered
4.	Registration No.	182 of 2017
5.	Total consideration	Rs. 45,00,000
6.	Total amount paid by the complainant upto date	Rs. 45,00,000
7.	Payment Plan	Down Payment Plan
8.	Percentage of consideration amount	100 per cent
9.	Date of Agreement	08/11/2016
10.	Date of delivery of possession.	Clause 24 - July 2018
11.	Penalty Clause as per builder buyer agreement	Clause 24 - Rs. 5/- per sq. ft. per month
12.	Cause of delay in delivery of possession	No valid reason



3. As per the details provided above, which have been checked as per record available in the case file provided by the complainant and respondent. A builder buyer agreement is available on record for Unit No. B-2202 according to which the possession of the aforesaid unit was to be delivered by July,2018. The

promoter has failed to deliver the possession of the said unit to the complainant by the due date nor has paid any compensation i.e. @ Rs. 5 per Sq. ft of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 08/11/2018. Therefore, the promoter has not fulfilled his committed liability as on date.

The relief sought by the complainant is of immediate possession of the flat along with interest on delayed period till actual handing over of the possession.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 26.06.2018. The case came up for hearing on 26.06.2018 & 19.07.2018. The respondent filed reply on 10.07.2018.
5. The respondent in its reply stated that since the due date of handing over possession was 31st August 2018 with a grace period of 6 months, the present complaint is not maintainable before the hon'ble Authority under section 31 of RERA Act.

The respondent contended that the authority does not have jurisdiction to adjudicate the matter since the complainant is not able to disclose a cause of action showing violation of any of the provisions of RERA Act 2016.



The respondent further contended that the cause of action which is being pleaded in the complaint is of pre-RERA period and the penalties prescribed under the RERA Act and the rules and regulations made there under.

The respondent states that the delay caused was due to force majeure circumstances which prevented the respondent from meeting construction schedule resulting in delay in handing over the apartment.

6. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. As stated by the Counsel for the respondent, it has been emphasized that the respondent has been prevented from such force majeure circumstances which prevented them from meeting the construction schedule resulting in delay in handling over the apartment. The counsel for the respondent submits that the respondent is utilizing all its resources to complete the project and handover the apartment in question to the complainant. The counsel for the complainant stated that on 6h May 2018, the builder himself accepted that the possession was delayed. The Respondent submitted that they will give possession of the unit to the complainant in July 2020.



7. As per clause 24 of the builder-buyer agreement, the Company proposed to hand over the possession of the said unit by July, 2018. The clause regarding possession of the said unit is reproduced below:

24. POSSESSION OF UNIT

*"The possession of the unit shall be given by July 2018, or pextended period as permitted by the agreement. However, the company hereby agrees to compensate the allottee/s @ Rs 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 grace period of 6 months and upto the offer letter of possession or actual possession whichever is earlier.
....."*

8. Accordingly, the due date of possession was July 2018. As far as the penalty clause in case of delay in payment by allottee is concerned which is 2 % per month, it is held to be one sided as also held in para 181 of the judgment in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

".....Agreement s 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."

9. As the possession of the flat was to be delivered by July 2018, as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana 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."



10. 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."

11. 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.



12. As per obligations on the promoter under section 18(1) proviso, the promoter is liable to pay the complainant interest at the

prescribed rate for every month of delay till the handing over the possession as the promoter has not fulfilled his obligation.

Section 18(1) is reproduced below:

“18.(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.

13. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

14. 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.




15. Thus, the Authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to pay interest for every month of delay till handing over of the possession @ 10.45% p.a. The interest shall be paid to the complainant before 10th of each month i.e. the first payment of interest shall be made for the month of August 2018 on or before 10th September 2018. It was further directed that in case the complainant wants to visit the site then she shall be allowed by the promoter otherwise it will be treated as violation of the Act and orders of the Hon'ble Authority.
16. In case of default in giving possession by 31st July 2020, the complainant shall be at liberty to exercise his right as per section 19(4) and a penal action shall be taken against the respondent. Section 19(4) is reproduced below:

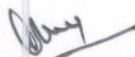
"The allottee shall be entitled to claim refund of amount paid along with interest at such rate as may be prescribed under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due



to discontinue of his business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereafter."

17. The order is pronounced.
18. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member



HARERA
GURUGRAM

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

