

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

**Complaint No. : 476 of 2018**  
**First date of hearing: 23.08.2018**  
**Date of Decision : 23.08.2018**

Mr, Rajesh Soni and other,  
R/o. – 203, Mariners Home,  
Sector-56, Gurgaon

**Complainant**

**Versus**

Supertech Limited,  
Regd. Office: 114, Hemkunt Chamber 89,  
Nehru Place, New Delhi-110019

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Rajesh Soni Complainant in person  
Shri Shrikant Advocate for the complainant  
Shri Oshin Advocate for the respondent

**ORDER**

1. A complaint dated 25.06.2018 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 complainant Mr. Rajesh Soni, against the promoter Supertech Ltd, for not executing the



agreement of sale and on account of default in delivery of possession of the apartment number A/1603, in the project 'Araville' for not which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"Araville", Sector-79, Gurugram
2.	Apartment/unit no.	A-1603
3.	Apartment measuring	655.19 sq. ft.
4.	RERA registered/ not registered.	<b>Not registered</b>
5.	Booking date	20.05.2013
6.	Date of execution of apartment buyer's agreement	Not executed
7.	Payment plan	Construction Linked Plan
8.	Basic sale price	Not known
9.	Total amount paid by the complainant till date	Rs.17,50,000/-
10.	Date of delivery of possession as per clause of apartment buyer's agreement.	Cannot be determined.

3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is not available on record for the aforesaid apartment. Neither the respondent has delivered the possession of the said unit to the purchaser nor they have paid any compensation. Therefore, the promoter has not fulfilled his committed liability as on date.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 23.08.2018. The case came up for hearing on 23.08.2018. The reply was not filed on behalf of the respondent to be perused.

### **Facts of the complaint**

5. Briefly stated, the facts of the case as culled out from the case of complainant are that the complainants were impressed by the lofty advertisement issued by the respondent and agreed to purchase a 3 BHK Flat in project of respondent namely "Araille" on 18.05.2013. The complainant had booked his flat in the group housing complex located at Sector 79, Gurugram and made an initial payment of Rs.7,50,000/- towards booking. It was assured that a formal allotment letter as well as flat buyer's agreement would be executed soon.
6. There was no formal agreement in place, nor was there any agreed payment plan in place. The complainant, first time received a payment demand letter dated 04.07.2013 wherein it was mentioned for the first time that a flat christened as "Araville Unit No. A-1603" had been earmarked for the complainant although the respondent never issued a formal allotment letter as was promised. The complainant were



amazed and shocked despite there being no formal payment plan in place there were various sums shown as “due” on “within 60 days” and “90 days”. The complainant had again paid a sum of Rs.10,00,000/- through the broker whereupon receipt bearing no. 19360 dated 17.06.2014 was issued by the respondent. Thus, the respondent have received a sum of Rs. 17,50,000/-. The complainant have been chasing the respondent day in and day out but to no avail. The complainant always had sufficient means to pay for the flat. It is, however, the respondent who have created a situation where the complainant have no trust upon the respondent.

7. The complainant got served a legal notice dated 26.06.2015 upon the respondent through their advocate whereby they exercised their right to cancel the booking and seek the refund of the amount they have paid to the respondents along with interest @24% per annum on receipt of this legal notice. The respondent did not bother to reply the legal notice of the complainant. The complainant regularly visited the office of respondent to resolve the issue but they fail to satisfy the concern of the complainants.

8. **Issues raised by the complainant are as follow:**



- i. Whether the respondent has violated the terms and conditions of allotment?
- ii. Whether there is any reasonable justification for not executing the agreement?
- iii. Whether there is any reasonable justification for not constructing project and demanding instalment from the purchaser?
- iv. Whether there has been deliberate or otherwise, misrepresentation on part of developer regarding the project?
- v. Whether complainant is entitled for refund of all the money paid to respondent and for compounding interest @18% per annum from date of booking to till date?
- vi. Whether complainant is entitled for compensation for mental agony and harassment?

9. **Relief sought:**

The complainant is seeking the following relief:

- i. Pass an order in favour of the complainant and against the respondent with the direction for refund the amount of Rs.17,50,000/- and



- ii. Direct the respondent to pay interest @24% per annum simple interest from the respective date of payment made to the respondent.
- iii. Pass an order in favour of the complainant and against the respondent that to pay a nominal sum of Rs.200,000/- as damages/losses suffered, as calculated above, and on account for harassment, breach of contract and mental agony.
- iv. Pass an order for the cost of the litigation in favour of complainants

#### **Respondent's reply**

10. The advocate on behalf of the respondent had submitted that complainant has already filed a complaint before the State Consumer Dispute Redressal Commission, Delhi on similar ground, so this complaint is not maintainable.

#### **Determination of issues:**

The complaint stands dismissed as the complaint on the same cause of action is already pending before the Consumer Dispute Redressal Commission, Delhi.

#### **Findings of the authority**



11. The preliminary objections have not been raised by the respondent as on the first hearing and therefore, the case stands dismissed.

**Decision and directions of the authority**

12. After taking into consideration all the material facts as adduced, the authority has dismissed this complaint as withdrawn with liberty to file afresh complaint before the adjudicating officer as it is not maintainable before this authority.

13. The order is pronounced.

14. Case file be consigned to the registry.

15. Case file be consigned to the project registration branch

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



Date:23.08.2018

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 23.08.2018
Complaint No.	476/2018 Case titled as Mr. Rajesh Soni & Anr. V/ s M/s Supertech Limited
Complainant	Mr. Rajesh Soni & Anr.
Represented through	Shri Shrikant Advocate for the complainant.
Respondent	M/s Supertech Limited
Respondent Represented through	Ms. Oshin Advocate for the respondent.
Last date of hearing	First hearing

**Proceedings**

Ms. Oshin Advocate has appeared on behalf of the respondent. She has submitted that the complainant has already filed a complaint before State Consumer Dispute Redressal Commission, Delhi on similar ground, so, this complaint is not maintainable. Therefore, this complaint is dismissed as withdrawn with liberty to file afresh complaint before the Adjudicating Officer as it is not maintainable before this authority. File be consigned to the Registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
23.8.2018