

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

**Complaint No. : 293 of 2018**  
**First date of hearing: 18.07.2018**  
**Date of Decision : 04.09.2018**

Mr. Vijay Kumar Dhar  
R/o 233, Vikram Nagar, Sarwal Chowk, Jammu  
City, Rehari, Jammu and Kashmir, India-180005 **Complainant**

**Versus**

M/s Supertech Ltd.  
Regd office: 1114, 11<sup>th</sup> floor, Hemkunt  
Chambers 89, Nehru Place, New Delhi-110019 **Respondent**

**CORAM:**

Dr. K.K. Khandelwal **Chairman**  
Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Vijay Kumar Dhar **Complainant in person**  
Shri Kuldeep Pandit **Advocate for the complainant**  
Ms. Oshin **Advocate for the respondent**

**ORDER**

1. A complaint dated 18.05.2018 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 complainant Mr. Vijay Kumar Dhar, against the promoter M/s Supertech Ltd. on account of violation of the clause 24 of the buyer's developer agreement executed on 08.11.2016 in respect of residential



unit number R0380B02301 block/tower 'B', 23<sup>rd</sup> floor, with a super area of 1180 sq. ft. in the project 'Supertech Hues' for not handing over possession on the due date i.e. 31.08.2018 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	Supertech Hues, Sector 68, Gurugram
2.	Type of real estate project	Residential
3.	Apartment/unit No.	R0380B02301, Flat 2301
4.	Flat measuring	1180 sq. ft.
5.	RERA registered/ not registered.	<b>Registered (182 of 2017)</b>
6.	Booking date	05.11.2016
7.	Date of execution of apartment buyer's agreement	08.11.2016
8.	Payment plan	Time linked payment plan
9.	Basic sale price	Rs.43,16,985/-
10.	Total amount paid by the complainant till date	Rs.45,00,000/-
11.	Date of delivery of possession as per clause 24 of Buyers' developer agreement dated 08.11.2016	28.02.2019
12.	Delay in handing over possession till date	No delay, Pre mature complaint
13.	Penalty clause as per apartment buyer's agreement dated 08.11.2016	Clause 24 of the agreement i.e. Rs.5/- per sq. ft. of the super area of the unit per month.

3. The details mentioned above have been checked and found on record as per the case file by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 28.02.2019



which has not lapsed yet. Therefore, the promoter has not failed to fulfil 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 18.07.2018. The case came up for hearing on 18.07.2018 and 04.09.2018. The reply filed on behalf of the respondent has been perused.

#### FACTS OF THE COMPLAINT

5. The complainant submitted that on 27.10.2015, the respondent company i.e. Supertech Limited appointed broker Axion Landbase Ltd. Who approached the complainant with advertisement to buy a flat in Supertech Hues in Sector 68, Gurgaon, Haryana.
6. The complainant submitted that the complainant gave a cheque no bearing 873868 for Rs 10,00,000/- and cheque no. 873873 for Rs 35,00,000/- to Mr. Rajesh Saraf of Axion Landbase appointed by Supertech.
7. The complainant submitted that on 08.11.2016, the respondent company issued receipts vide 5019874 for Rs 10,00,000/- and 5019873 for Rs 35,00,000/-.
8. The complainant submitted that both the parties signed a builder buyer agreement on 08.11.2016 for the above



mentioned unit no. for full down payment of Rs 43,16,985/- of the flat plus service tax.

9. The complainant submitted that the respondent company issued the statement of account which showed the entire amount due along with service tax i.e. Rs 45,00,000/-.
10. The complainant submitted that from December 2016 to December 2017, the complainant made multiple visits to the site but found that no construction had taken place. On asking to many people at the site, the reason for non-construction was given as due to non-availability of funds.
11. The complainant submitted that on 10.05.2018, after virtually no response from the side of the respondent, the complainant found out the fact that the date of possession was given as July 2019 i.e. almost 10 months' delay from the agreement date on the website of the respondent.
12. The complainant submitted that on 16.05.2018, he wrote a mail to CRM of the builder and asking for possession in August, 2018.
13. The complainant submitted that the work at the site is stopped and significantly delayed due to reasons best known to the respondent company, hence the present complaint.



### ISSUES TO BE DECIDED

- I. Whether the complainant is entitled for possession of the said flat no. by 31.08.2018 as mentioned in the agreement dated 08.11.2016?
- II. Whether the complainant is entitled for interest @24% on the delayed possession from the date of payment till realization from the respondent?

### RELIEF SOUGHT

- I. Direct the respondent to pay interest @24% on the delayed possession from the date of payment till the date of realization as the complainant has made all the payments in advance for which his claim is justified.
- II. Pass such other order as the authority deems fit and proper.

### RESPONDENT'S REPLY

14. The respondent submitted that as the project is located in Sector 68 Gurugram, therefore the Hon'ble authority has territorial jurisdiction to entertain the present complaint.
15. The respondent submitted that the promised date of the delivery of the flat as per the flat buyer agreement dated 08.11.2016 is 31.08.2018 and not what the complainant has alleged in his complaint. Clause 24 of the agreement is reproduced below:

#### *24 Possession*

*"The possession of the unit shall be given by August 2018 or extended period as permitted by the agreement. However, the*



*company hereby agrees to compensate the allottee/s @Rs 5/- sq. ft. of super area of the unit per month for any delay in handing over of possession of the unit beyond the given period plus grace period of 6 months and upto the offer letter of possession or actual physical possession whichever is earlier.....”*

16. The respondent submitted that the present complaint is not maintainable before the authority u/s 31 r/w rule 28 or 29 of HARERA rules, 2017, neither there is any cause of action which has arisen in the present complaint till date.
17. The respondent submitted that the present complaint is not maintainable as the present complaint pertains to the Pre RERA period and the Act cannot be applied retrospectively as the Act is prospective in nature.
18. The respondent submitted that the delay caused in delivering the possession to the apartment is attributed to the fact solely because of the reasons beyond the control of the respondents. Clause 24 of the agreement specifically states that the date of possession shall get extended automatically on account of delay caused due to force majeure conditions or judicial pronouncements.

#### 24. Possession

*“..... However, any delay in project execution or its possession caused due to force majeure conditions and/or judicial pronouncement shall be excluded from the aforesaid possession period.....”*



19. The respondent submitted that as per Clause 43 of the said agreement, the parties themselves have agreed to the said clause of force majeure conditions due to which the project can be delayed. Clause 43 is reproduced below:

*43. That the buyer agrees that if due to force majeure, any reasons beyond the reasonable control of the developer, or due to any legislation, order or regulation made or issued by the govt. authority in future..... the possession of the allotted unit may get delayed and/or whole or part of the said project may be abandoned.*

20. The respondent submits that in addition to the above factors, there were many other factors which caused delay in handing over of the possession like, demonetization, imposition of GST and service tax etc. which resulted in the downfall of the real estate market. These events lasted for 2 to 3 years and caused huge disturbances in the market due to which it became quite difficult to pay to the labourers, thus the project got delayed.

21. The respondent submitted that the delay of the aforesaid unit no. can also be attributed to the fact that there had been a heavy shortage of supply of construction material i.e. river sand and bricks etc. throughout Haryana which made it impossible to construct the said project at that particular time. Reference to be made to **Deepak Kumar v. State of**



**Haryana(I.A. No. 12-13 of 2011 in SLP no. 19628-29 of 2009).**

22. The respondent submitted that at present the construction is going on the site and shall be completed as per the schedule mentioned in the project registration document submitted before the authority.
23. The respondent submitted that they are willing to transfer the booking of the complainant in an equivalent alternative apartment in one of its project "ARAVILLE" located in sector 79, Gurugram. The project is at a distance of approx. 4 km from Hues and is almost ready. The said project has been inspected by a court appointed local commissioner Mr. Suresh Kumar Verma and as per his site inspection the project is almost ready.
24. The respondent submitted that project Hues has received registration certificate from RERA on 04.09.2017 and offer of possession would be issued to the complainant around June 2020.
25. The respondent submits that the present complaint is premature and is not subject to jurisdiction unless the cause of action arises.





## DETERMINATION OF ISSUES

- I. In regard to the first issue raised by the complainant, the answer lies in the negative with respect to the promised date because as per clause 24 of the agreement dated 08.11.2016 the date of delivery of possession is 31.08.2018 plus 6 months of grace period i.e. 28.02.2019. The date given in the agreement has not lapsed yet, therefore the respondent is not liable to deliver possession on the date stated by the complainant and the present complaint is premature and is liable to be dismissed.
- II. In regard to the second issue, the complainant is entitled to get interest at the prescribed rate given under the HARERA rules, 2017, if the respondent fails to deliver the possession on the promised date of possession i.e. 28.02.2019. Thereafter, the respondent will be liable to pay interest as per HARERA rules, 2017 from the due date of possession till the handing over of actual possession. Presently, the complaint is dismissed for no cause of action.

## DECISIONS AND DIRECTIONS OF THE AUTHORITY

26. The complainant makes a submission before the authority u/s 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above:

### ***34 Functions of authority***

*(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agent under this Act and the rules and regulations made thereunder.*



27. The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation 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.*

28. The authority hereby directs that keeping in view that there is a grace period of six months, the present complaint is premature and the respondent is directed to pay monthly interest after the expiry of the grace period at the prescribed rate for every month of delay. The respondent is also directed to deposit Rs 25,000/- as fee of the Local Commissioner payable directly to Mr. Suresh Kumar Verma.

29. Order is pronounced.

30. File is to be consigned to the registry.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

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

Chairman

04.09.2018

Haryana Real Estate Regulatory Authority, Gurugram



HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 04.09.2018
Complaint No.	293/2018 Case titled as Mr. Vijay Kumar Dhar V/s M/s Supertech Ltd.
Complainant	Mr. Vijay Kumar Dhar
Represented through	Shri Kuldeep Pandit in person on behalf of the complainant
Respondent	M/s Supertech Ltd.
Respondent Represented through	Shri Amit Solanki Manager (CRM) on behalf of the company with Ms. Oshin, Advocate for the respondent
Last date of hearing	18.7.2018

**Proceedings**

**The project is registered.**

The complainant while narrating the facts of the matter also brought to the notice of the authority that the statement given by Shri Amit Solanki, Manager (CRM) is far away from reality. Shri Amit Solanki made a statement that the construction is going on at site. The authority decided to appoint a Local Commissioner to look into the veracity of his statement. There are 4/5 such cases which have come before the authority today. In all these cases, claim has been made by the legal representative of the promoter, namely, Shri Amit Solanki, Manager (CRM) that the construction is going on at site. To verify the veracity of the facts, **Shri Suresh Kumar Verma SDO (retired) PWD, B&R, Chandigarh resident of 421/C/16 Civil Lines,**

**Gurgaon Contact No.09417051502** is hereby appointed as a Local Commissioner who shall visit the spot and verify the status of construction and submit his report within a week to the registration branch so that the declarations made at the time of registration could be verified and further penal action is initiated against them for failure to stick to the declaration. As far as this complaint is concerned, the complainant's grievance is very genuine that he has paid full amount under the impression that the project will be delivered within a promised time of 18 months. Keeping in view that there is a grace period of six months, this complaint is **pre-mature**. The matter is disposed of with the direction to the promoter that after the expiry of grace period, to pay monthly interest at the prescribed rate for every month of delay. Meanwhile, the promoter is also directed to deposit Rs.25,000/- as fee of the Local Commissioner payable directedly to Mr. Suresh Kumar Verma (retired SDO) by the respondent. 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)  
04.09.2018