

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

Complaint no. : 4982 of 2019
First date of hearing : 08.01.2019
Date of decision : 26.02.2020

Mr. Paras Kochhar S/o Sh.
Ravinder Kumar Kochhar
R/o: - C-302, Saraswati
Co-Operative Group Housing
Society, plot No. 97, I.P Extension,
Patparganj, New Delhi- 110092

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. Hemant Phogat
Sh. Rishabh Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 18.11.2019 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	"Hill Town" 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.	R045T201204, 12 th floor, Tower T2 [Page 26 of complaint]
9.	Unit measuring	1685 sq. ft.



10.	Date of execution of Allotment Letter [Note; Apartment buyer agreement is not recorded]	24.03.2015 [Page 25 of complaint]
11.	Payment plan	Construction linked payment plan [Page 26 of complaint]
12.	Total consideration as per payment plan	Rs.91,13,500/- [Page 26 of complaint]
13.	Total amount paid by the complainants as per receipt submitted by complaint	Rs. 9,47,144/- [Page 22&23 of complaint]
	India bulls home loan statement of account dated 31.07.2019	Rs.75,00,000/- [Page 47 of complaint]
14.	Due date of delivery of possession as per clause I (25) of the Allotment letter: by December 2018 + 6 months grace period. [Page 33 of complaint]	30.06.2019
15.	Date of Memorandum of Understanding dated	31.03.2015 [Page 41 of complaint]
16.	Delay in handing over possession till date of this order	Possession has not been handed over so far
17.	Status of the project	Ongoing
18.	Specific relief sought	i. to pay delayed interest as well as the monthly delayed interest till actual possession of the flat on the amount paid by the complainant ii. to pay the Pre-EMIs till the actual physical possession of the flat as per the MOU dated 28.03.2015



		iii. to pay the Pre-EMIs which have been paid by the allottee to the bank
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3. As per clause I (25) of the Allotment letter, the possession was to be handed over by December, 2018 plus further period of 6 months. But the promoter/respondent failed to handover the possession to the complainant. Clause I (25) of the Allotment letter which is reproduced herein below:

"I. 26 POSSESSION OF ALLOTTED FLOOR/APARTMENT: -

*The possession of the allotted floor/Apartment shall be given by **DEC 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. As per view of the fact mentioned aforesaid, it is crystal clear that as per the clause I(25) of the agreement to sell that the unit no. 1204, 12th Floor, Tower T2 had to be handed over by

DEC,2018 along with additional grace period of 6 months, which comes out to be 30.06.2019 from the date of execution of agreement to sell. Whereas the builder has miserably failed in completing the project and handing over the unit to the home buyer for which he has paid from his pocket an amount of Rs.9,47,144/- against the total sale consideration of Rs.91,13,500/- Since the builder has failed miserably in completing his obligation as per the provision of section 18(1) of RERA Act the buyer can either seek refund or possession at prescribed rate of interest till the actual handing over of possession. In the present case the buyer is seeking delayed possession charges.

5. Notice to the promoter/respondent through speed post and through E-mail address (mohd.tariq@supertechlimited.com) was sent the delivery report of which is annexed. This is a clear evidence that the service was completed. Though the counsel and AR of the respondent company has marked the presence dated 08.01.2020 and 26.02.2020. but the respondent has failed to file reply.
6. Arguments of both sides were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time as per clause I (25) of the agreement to sell.

7. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. by virtue of clause I (25) of Allotment letter executed between the parties on 24.03.2015, possession of the booked unit was to be delivered within time i.e. 31.12.2018 plus grace period of 6 months to cover any unforeseen circumstances. Therefore, the due date of handing over possession comes out to be 30.06.2019. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the Allotment letter dated 24.03.2015 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. a MoU was executed between the parties on 31.3.2015 w.r.t subvention scheme. Clause B&C of the MoU are re-produced as under: -

“(b) That the tenure of this sub-vention scheme as approved by Indiabulls Housing Finance Limited is 36 months.

“(c) That Developer shall pay the pre-EMI every month to buyer for the housing loan taken by buyer against



the aforesaid property after the scheme ends with Indiabulls Housing Finance Limited till the offer of possession is made by the Developer to the Buyer”.

Since the substantial part of the payment to the tune of Rs. 75,00,000/- has been raised by the developer on behalf of the complainant from M/s Indiabulls Housing Finance Limited. Despite the fact that the pre-EMIs are being paid by the complainant, however, interest liability along with the principal amount is that of the complainant till the offer of possession. In such type of cases, the builder/developer who has paid EMIs for a particular period of 36 months that principal amount shall not be the part of the interest. However, the complainant/allottee is entitled for delayed possession charges till the offer of possession after obtaining of occupation certificate by the respondent on the rest of the amount which he had paid from his pocket on account of raising of loan. Calculation sheet to that extent be made inter-se both the parties. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.15% p.a. w.e.f. 01.07.2019 till offer of possession of the booked unit as per the provision of section 18(1) of the Act read with rules 15 of the Rules.

8. 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 delayed possession charges @10.15% per annum till offer of possession after obtaining of occupation certificate by the respondent on the rest of the amount which he had paid from the pocket on account of raising of loan, as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.
- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent months.
- (iii) The respondent shall not charge anything from the complainant which is not the part of the Allotment Letter.
- (iv) Complaint stands disposed of.
- (v) File be consigned to registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.02.2020

Judgement uploaded on 15.05.2020