

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

**Complaint no. : 2821 of 2019**  
**First date of hearing : 08.11.2019**  
**Date of decision : 26.02.2020**

1. Mr. Rohit Patney S/o Sh.

Roop Kumar Patney

2. Aradhana Patney W/o Sh.

Rohit Patney Both R/o of flat no.

1105, Block-17, Heritage City, DLF-2,

Gurugram-122018

Through- Kiran Rai Khatri S/o Sh. J.D

Khatri (Special Power of Attorney Holder)

r/o T-3/1001, Uniworld Garden, Sohna Road,

Gurugram-122018

**Complainants**

**Versus**

M/s Supertech Limited.

Regd. office: 1114, 11<sup>th</sup> floor,

Hemkunt Chambers, 89, Nehru

Place, New Delhi- 110019

**Respondent**

**CORAM:**

Shri Samir Kumar

Shri Subhash Chander Kush

**Member**

**Member**

**APPEARANCE:**

Sh. K.R Khatri

Special POA Holder of  
complainant

Sh. Rishabh Gupta

Advocate for the respondent

**ORDER**

1. The present complaint dated 15.07.2019 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<br>[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.<br>89 of 2014 dated 08.08.2014 valid till 07.08.2019<br>134-136 of 2014 dated 26.08.2014 valid till 25.08.2019 |
| 5.    | Name of licensee                     | Sarv Realtors Private Limited  |

|     |   |   |
|-----|---|---|
| 6.  | RERA Registered/ not registered   | <b>Registered vide no. 182 of 2017 dated 04.09.2017<br/>(Tower No. A to H, K, M to P and T to V, W)</b> |
| 7.  | RERA registration valid up to   | 31.12.2021  |
| 8.  | Unit no.  | 1003, 10 <sup>th</sup> floor, Tower N<br>[Page 24 of complaint]   |
| 9.  | Unit measuring  | 1430 sq. ft.  |
| 10. | Date of execution of buyer developer agreement  | 20.02.2015<br>[Page 23 of complaint]  |
| 11. | Payment plan  | Subvention payment plan<br>[Page 25 of complaint]   |
| 12. | Date of execution of Tripartite Agreement   | 21.02.2015<br>[Page 41 of complaint]  |
| 13. | Total consideration as per payment plan and Applicant Ledger Dated 25.02.2019 (Page 25 and page no 45 of complaint)                                       | Rs. 1,08,01,950/-   |
| 14. | Total amount paid by the complainants as per Applicant ledger dated 25.02.2019  | Rs. 1,00,94,260/-<br>[annexure 4, page no 47 of complaint]  |
| 15. | Due date of delivery of possession as per clause E (24) of the buyer developer agreement: by July 2018 + 6 months grace period.<br>[Page 31 of complaint] | 31.01.2019  |
| 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 | To direct the respondent: -<br>i. to pay immediately outstanding EMI's till date as per the agreement dated 21.02.2015;<br>ii. to pay delayed possession charges along with prescribed rate of interest till the handing over possession; |
|-----|------------------------|---|

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. 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.....”*

4. As purview of the fact mentioned aforesaid, it is crystal clear that as per the clause E(24) of the agreement to sell that the unit no. 1003, 10<sup>th</sup> Floor, Tower N had to be handed over by July, 2018 along with additional grace period of 6 months, which comes out to be 31.01.2019 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 an amount of Rs.1,00,94,260/- against the total sale consideration of Rs.1,08,01,950/- 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. 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.
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 E (24) 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 E (24) of buyer developer agreement executed between the parties on 20.02.2015, possession of the booked unit was to be delivered within stipulated time i.e. by 31.07.2018 plus grace period of 6 months. 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 20.02.2015 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. An agreement dated 21.02.2015 was executed between the parties w.r.t sub-vention scheme. Clause B&C of the agreement are re-produced as under: -

*“(b) That the tenure of this sub-vention scheme as approved by the HDFC Limited is 36 months commencing from March 2014 and closing on February 2017.*

*“(c) That Developer shall pay the equated monthly instalment (EMI) every month to buyer against the aforesaid property starting from March 2017 (after the scheme ends with HDFC Limited) till the offer of possession is made by the Developer to the Buyer”.*

Since the substantial part of the payment has been raised by the developer on behalf of the complainant from HDFC 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 is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.15% 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.

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 10<sup>th</sup> of subsequent months.





- (iii) The respondent shall not charge anything from the complainant which is not part of the Buyer Developer Agreement.
- (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

