

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

Complaint No. : 291 of 2018
First date of hearing : 18.07.2018
Date of Decision : 04.09.2018

Mrs. Navita Srinet,
Mr. Manish Srinet
Both R/o. B-132, Shivalik,
Malviya Nagar, Delhi-110017.

Complainants

Versus

M/s Supertech Ltd.
Address: 1114, 11th floor, 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 Navita Srinet
Shri Amit Solanki

Complainant in person
Manager (CRM) on behalf of the
respondent company

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 complainants Mrs. Navita Srinet and Mr. Manish Srinet, against the promoter M/s



Supertech Ltd. on account of violation of the clause 23 of builder buyer agreement executed on 30.07.2017 in respect of flat/unit described as below for not handing over possession on the due date which is an obligation 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", Village Badshahpur, Sector 68, Gurugram.
2.	Registered/ not registered	Registered
3.	RERA registration no.	182 of 2017 dated 04.09.2017
4.	Date of completion as per HRERA registration certificate.	June 2020
5.	Flat/apartment/unit no.	2402, 24 th floor, tower/block- B.
6.	Unit measuring	1180 sq. ft.
7.	Date of execution of builder buyer agreement	30.07.2017
8.	Total consideration amount as per agreement dated 30.07.2017	Rs.38,99,951/-
9.	Total amount paid by the complainants till date	Rs.39,00,000/-
10.	Percentage of consideration amount	Approx. 100 percent
11.	Booking date	06.06.2017
12.	Date of delivery of possession as per clause 23 of BBA i.e. August 2018 + 6 months grace period	February 2019
13.	Delay in handing over possession till date	Premature
14.	Penalty clause as per builder buyer agreement dated 30.07.2017	Clause 23 of the BBA i.e. Rs.5/- per sq. ft. of super area of the unit per month for any delay in



		handing over possession of the unit.
15.	Cause of delay in delivery of possession as stated by the respondent.	<p>Force majeure circumstances which were beyond the control of the respondent such as demonetization, imposition of GST and apprehensions & expectations of buyers and stakeholders in execution of provisions of RERA.</p> <p>Shortage of labour due to implementation of scheme NREGA & JNNURM.</p> <p>Heavy shortage of supply of construction material i.e. river sand & bricks etc. in pursuance of Hon'ble Supreme court order in the case Deepak Kumar etc. V. State of Haryana (I.A. No. 12-13 of 2011 dated 27th February 2012)</p>

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A builder buyer agreement is available on record for the aforesaid apartment according to which the possession of the said unit is to be delivered by 31st August 2018 plus grace period of 6 months. The respondent has not delivered the possession of the said unit as on date to the purchaser.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through its counsel appeared on 18.07.2018. The case came up for hearing on 18.07.2018 & 04.09.2018. The reply has been filed on behalf of the respondent on 10.07.2018 which has been perused.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainants are that respondent's broker Axion Landbase Ltd. approached the complainants with advertisement to buy a flat in 'Supertech HUES' in Sector 68, Gurugram. The builder buyer agreement was executed on 30.07.2017 for unit no. 2402 for tower B for consideration of Rs.38,99,951/- for full down payment of the flat. The complainants paid a sum of Rs.39,00,000/- vide RTGS dated 17.08.2017 and the same was acknowledged by the respondent vide receipt dated 06.10.2017. The complainants submitted that they made multiple visits to the site from October 2017 to May 2018 and found that there was virtually no construction happening at the construction site.
6. On 16.05.2018, the complainants found that the date of possession on the website of the respondent as July 2019 which is almost 10 months from the due date as per BBA. The



construction at the site is significantly delayed. The complainants also wrote an email to CRM person of the respondent asking for possession in August 2018.

7. Issues raised by the complainants are as follow:

- i. Whether the complainants will get possession of the flat by August 2018 for unit no. B-2402 in the said project along with delayed compensation @ 24% compound interest from the date of payment till realisation from the respondent as all the payments were made in advance against the promise to deliver by August 2018?
- ii. Reimbursement of charges for the present complaint?
- iii. Rs.10,00,000/- as cost for mental agony and emotional distress due to delay?

Respondent's Reply:

8. The respondent has raised various preliminary objections and submissions challenging the jurisdiction of this Hon'ble authority. They are as follow:

- i. The respondent submitted that the promised date of delivery of the flat as per clause 23 of BBA is 31st August 2018.
- ii. The respondent also submitted that present complaint is not maintainable before this authority under section 31 of the Act read with rule 28 & 29 of the Rules and the



authority has no jurisdiction to adjudicate the matter because the complainants are not able to disclose a cause of action showing violation of any provision of any of the provision of the Act *ibid*.

- iii. Also, the complaint is not maintainable because the cause of action that is being pleaded in the complaint is of pre-RERA period and the penalties prescribed under the Act are not applicable retrospectively. The Act is applicable prospectively.
- iv. The alleged cause of action / violation does not constitute a contravention of the Act and Rules made thereunder.

The respondent is also ready for an equivalent alternative apartment in the adjacent building in project 'Aravalli', Sector 79, Gurugram.

Reply on merits:

9. The respondent admitted the fact that the builder buyer agreement was executed on 30.07.2017 for unit no. 2402, tower B in the project 'Supertech HUES' for consideration of Rs.38,99,951/-. The complainants paid a sum of Rs.39,00,000/- vide RTGS dated 17.08.2017. The respondent denied the fact that the construction at the site is significantly delayed.



10. However, the respondent submitted that it was agreed between the parties vide clause 23 of BBA that the apartment is reasonably expected to be delivered by the respondent by August 2018 subject to other clauses of the said agreement in which case the date of possession shall get extended automatically due to force majeure conditions and judicial pronouncements.

11. The respondent submitted that in the present complaint the delay in delivering the possession of the apartment to the complainants has attributed solely because of the reasons beyond the control of the respondent. Further, the contingency of delay in handing over the possession within the stipulated time was within the contemplation of the parties at the time of executing BBA as the parties has agreed vide clause 23 that in eventuality of delay in handing over possession beyond the period stipulated in the said clause, the allottee will be compensated with Rs.5/- per sq. ft. of super area of the unit per month. Vide clause 42 of the said agreement, the parties further agreed as to what constitutes force majeure conditions and in the present complaint the respondent has been prevented from force majeure circumstances which were beyond the control of the respondent and which prevented them from meeting the construction schedule resulting in



delay in handing over the possession. Clause 42 is reproduced as under:

“That the Buyer(s) 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(ies) in future or if any matter, issues relating to approvals, permissions, notices, notifications by Govt./competent authority(ies) and/or due to any matter relating to the project or its allotment/construction becoming subject matter of any suit/writ before a competent court, then the possession of the allotted unit may get delayed and /or whole or part of the said project may be abandoned. In such situations, no other claim will be preferred except that the Buyer(s)'s money shall be refunded without any interest and compensation on compliance of necessary formalities by the Buyer(s) in this regard.”

12. In the present complaint, the BBA entitles the respondent for a reasonable extension of time if the possession was delayed due to circumstances beyond the control of the respondent, including, amongst other, the effect of demonetization, imposition of Goods and Services Tax and apprehensions and expectations of buyers and stakeholders in execution of provisions of the RERA. All these enumerated events in the last 2-3 years have caused huge disturbances in the real estate market like due to demonetization it had become difficult to pay the labourers, due to GST the frequency of business-to-business payments had significantly reduced and amongst all this the news of the introduction of RERA almost killed fresh sales thereby causing huge crunch of finances. Furthermore,



apart from above reasons, on account of the following other reasons and circumstances that the project get delayed and timely possession of the project was not handed to the complainants:

- (a) In addition to the above, active implementation by the government of alluring and promising social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), further led to sudden shortage of labour/workforce in the real estate market as the available labour were tempted to return to their respective States due to the guaranteed employment under the said NREGA and JNNURM schemes. The said factor further created a vacuum and shortage of labour force in the NCR region. Large numbers of real estate projects, including the present project of the respondent herein, were struggling hard to cope with their construction schedules, but all in vain.
- (b) In addition to the above, there has been a heavy shortage of supply of construction material i.e. river sand and bricks etc. throughout Haryana, pursuant to order of Hon'ble Supreme Court of India in the case Deepak Kumar etc. v. State of Haryana(I.A. No. 12-13 of 2011 in SLPs (C) nos. 19628-29 of 2009 with SLPs (C) No. 729-731/2011, 21833/2009, 12498-499/ 2010, SLP(C)...CC16157/2011&CC 18235/2011 dated 27February 2012) and correspondingly, the construction progress slackened.



12. The respondent submitted that all the above-mentioned factors are responsible for delay in project. However, at present, the respondent is utilizing all its resources to complete the project and handover the apartment in question to the complainants, who is a valued customer of the respondent, at the earliest. At present construction is going on at the site and shall be completed as per the schedule mentioned in project registration document submitted before hon'ble authority. The respondent also undertakes to handover the booked apartment to the complainants at the earliest along with compensation for delay to the complainants as per the said agreement or as may be directed by the hon'ble authority by exercising its powers under the law. The reasons, aforementioned, are the bonafide reasons beyond the control of the respondent which caused the delay in completion of the project, however, the respondent is still trying to hand over the possession of the unit at the earliest possible time. So far as the compensation for delay in handing over the possession of the unit is concerned the parties are bound by the terms and conditions of the agreement.

Determination of issues

13. With respect to the first issue raised by the complainants, as per clause 23 of builder buyer agreement, the possession of the flat was to be handed over by August 2018 plus six months grace period. The clause regarding the possession of the said unit is reproduced below:



“23. Possession of unit

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/- per sq. ft. of super area of the unit per month for any delay in handing over the possession of the unit beyond the given period plus the grace period of 6 months and upto 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 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 settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special / beneficial scheme of the company i.e. No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due installments and additional charges as per the payment plan given in Allotment Letter.”

14. Accordingly, the due date of possession is February 2019. Since, the due date of possession has so far not been crossed, no cause of action has arisen in the present complaint. Thus, the present complaint is premature and the interest for the delayed possession as per section 18(1) of the Act has not accrued. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area of the said flat



as per Clause 23 of builder buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017), wherein the Bombay HC bench held that:

“...Agreements 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.”

15. The complainants vide amendment to the complaint made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve his right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. Therefore, the second and third issue raised by the complainants regarding compensation becomes infructuous.

Decision and directions of the authority

16. The preliminary objections raised by the respondent challenging jurisdiction of the authority stands dismissed. 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 complainants at a later stage.

17. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.

The complainants 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.



18. In the present complaint, the complainants are seeking immediate handover of possession of the said flat along with the interest as deemed fit by the authority for every month of delay, till the handing over of possession as per amendment to complaint.

19. The authority is of the view that since the due date of possession is by February 2019, the present complaint is premature and the same is disposed of. However, the complainants brought to the notice of the authority that there is negligible construction work going on at the site and keeping in view the progress, they shall not be able to complete this project even on the revised date mentioned in the registration documents.

20. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is duty bound to hand over the possession of the said unit by February 2019 as per agreement dated 30.07.2017.



- (ii) The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.45% p.a. till the handing over of the possession to the allottee in case the respondent fails to give possession by the due date i.e. February 2019.
- (iii) The promoter is directed to submit quarterly progress report right from the date of registration till the last quarter ending in June 2018.

21. The developer/promoter was asked to furnish details of the project at the time of hearing but for the reason best known to the respondent, has failed to furnish the details of project i.e. stage of construction, allotment made, total number of units sold and unsold inventory etc. Hence a penalty of Rs.50,000/- is imposed on the promoter for non-compliance with the instructions/orders/directions of the authority. The respondent is directed to submit the details of the project and pending quarterly reports to the registration branch within a week. If the above-mentioned details are submitted in time, then the penalty will not be applicable, otherwise the promoter shall deposit the penalty within a week i.e. after the expiry of period allowed for submission of the documents.

22. The order is pronounced.



23. A copy of this order be endorsed to the registration branch for further proceedings.
24. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

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