

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

Complaint no. : 2853 of 2019
First date of hearing : 22.10.2019
Date of decision : 26.02.2020

1. Mrs. Ruby Chauhan
R/o: - Valley view Estate, 1501,
Tower-4, Gurugram, Faridabad
Road, near Gwal Pahadi, Gurugram
Haryana-122011

Complainant

Versus

1.M/s Supertech Limited.
Regd. office: 1114, 11th floor,
Hemkunt Chambers, 89, Nehru
Place, New Delhi- 110019 सत्यमेव जयते
2.India Bulls Housing Finance Limited.
Regd. Office: 9th floor, Antriksh
Bhawan 22KG Marg, New Delhi
110001

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Abhijeet Gupta
Sh. Rishabh Gupta
Ms. Simran Grover

Advocate for the complainant
Advocate for the respondent no. 1
Advocate for the respondent no. 2

ORDER

1. The present complaint dated 11.07.2019 has been filed by the complainant/allottee 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" Sector- 02, Sohna Road Gurugram.
2.	Project area	100.36875 acres [as per land schedule detail provided by DTCP licence]
3.	Nature of the project	Residential Plotted 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 10 others
6.	RERA Registered/ not registered	Registered vide no. 97 of 2017 Dated 24.08.2017 [Page 14 of reply]
7.	RERA registration valid up to	30.06.2021
8.	Unit no.	1203, 12 th floor, Tower T6 [Page 17 of complaint]
9.	Unit measuring	1200 sq. ft.



10.	Date of execution of Memorandum of Understanding	23.06.2015 [Page 14 of complaint]
11.	Date of execution of Booking Form	24.01.2015 [Page 17 of complaint]
12.	Payment plan	Subvention linked payment plan [Page 18 of complaint]
13.	Total consideration as per payment plan	Rs.66,40,000/- [Page 18 of complaint]
14.	Total amount paid by the complainants as per alleged by complaint	Rs.6,83,591/- [Page 5 of complaint]
	Indian Bulls Home Loan amount as per statement of account dated 14.12.2018	Rs.54,97,920/- [Page 53to57 of complaint]
	Total amount	Rs.61,81,511/-
15.	Due date of delivery of possession as per Memorandum of Understanding (36 months) [Page 15 of complaint]	23.06.2018
16.	Delay in handing over possession till date to this order	Possession has not been handed over so far
17.	Status of the project	Ongoing
18.	Specific relief sought	i. To direct the respondent no. 1 to handover the actual possession of the residential unit; ii. To direct the respondent no. 1 to pay the EMIs of the loan amount disbursed by the respondent no.2



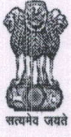
3. As per Memorandum of Understanding, the possession was to be handed over by 23.06.2018. But the promoter/respondent failed to handover the possession to the complainant.
4. As purview of the fact mentioned aforesaid, it is crystal clear that the unit no. 1203, 12th Floor, Tower T6 had to be handed over by stipulated time period. 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.6,83,591/- against the total sale consideration of Rs.66,40,000/- 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.
7. On consideration of the circumstances, the evidence and other record and submissions made by the parties 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 Memorandum of Understanding executed between the parties on 23.06.2015, possession of the booked unit was to be delivered within stipulated time. However, no BBA executed therefore, the due date of handing over possession has been calculated by Memorandum of Understanding dated 23.06.2015. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the Memorandum of Understanding dated 23.06.2015 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. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.15% p.a. 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 respondents are directed to pay interest accrued so far on the amount deposited by the complainant at the



prescribed rate of 10.15% p.a. for every month of delay from the due date of possession within 90 days from the date of this order and subsequent interest to be paid by the 10th of each succeeding month till actual offer of possession;

- (ii) The respondent shall not charge anything from the complainant which is not the part of the Booking form.
- (iii) Complaint stands disposed of.
- (iv) File be consigned to registry.

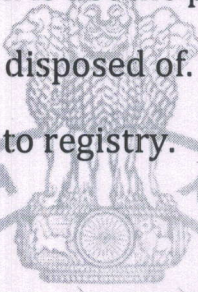
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.02.2020

Judgement uploaded on 02.06.2020



(Signature)

(Subhash Chander Kush)

Member