

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

**Complaint No. : 505 of 2018**  
**First date of hearing : 06.09.2018**  
**Date of Decision : 16.10.2018**

1. Mr. Devinder Singh Badla
2. Ms. Harpeet Kaur Badla  
Both R/o House no.41, Sector 27-A  
Chandigarh (UT)

**Complainants**

Versus

M/s Supertech Ltd.  
Address: 1114, 11<sup>th</sup> 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:**

Mr. Devinder singh & Harpeet Kaur Badla Complainant in person  
Ms. Soumya Tiwari Authorized representative on behalf of the respondent company

**ORDER**

1. A complaint dated 06.07.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Devinder



Singh Badla and Ms. Harpeet Kaur Badla, against the promoter M/s Supertech Ltd. on account of violation of clause 24 of the builder-buyer agreement executed on 20.06.2014 for unit no. 1704, 17<sup>th</sup> floor, A tower in the project “Supertech Hues” for not giving possession on the due date which is an obligation of the promoter 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.	Flat/apartment/unit no.	1704, 17 <sup>th</sup> floor, A tower
3.	DTCP licence no.	106 and 107 of 2013 dated 26.12.2013
4.	Registered/ not registered	<b>Registered</b>
5.	RERA registration no.	182 of 2017 dated 04.09.2017
6.	Date of completion as per HRERA registration certificate.	December, 2021
7.	Booking date	21.12.2013
8.	Payment plan	Construction linked plan
9.	Date of execution of builder buyer agreement	20.06.2014
10.	Total consideration amount as per agreement dated 20.06.2014	Rs. 87,23,360/-
11.	Total amount paid by the complainants till date	Rs. 64,55,268/-
12.	Percentage of consideration amount	74 % Approx.
13.	Date of delivery of possession	Clause 24 of the possession of the unit 42 months i.e. by June 2017 with grace period 6



		months i.e. December,2017
14.	Delay in handing over possession till date	10 months
15.	Penalty clause as per builder buyer agreement dated 20.06.2014	Clause 24 of the possession of the unit Rs. 5/- per sq. ft. per month
16.	Cause of delay in delivery of possession as stated by the respondent.	Force majeure circumstances which were beyond the control of the respondent such as non- availability of steel and/ or cement or other building materials and/ or water supply or electric power and/ or slow down strike etc.

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 developer agreement is available on record for the aforesaid apartment according to which the possession of the said unit is to be delivered by June, 2017. 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 06.09.2018. The case came up for hearing on 06.09.2018 and 16.10.2018. The



reply has been filed on behalf of the respondent on 25.09.2018 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 the promoter/developer of the real estate project issued an advertisement in newspapers/electronic media/e-mail and other media inviting applications for the purpose of flat in the real estate project located at Gurgaon, in the project named 'Supertech HUES 'in Sector 68, Gurugram, Haryana. The complainants booked the apartment with the respondent and initially paid part booking amount of Rs. 6,00,000 on 16.12.2013 which amounts to 8% of total basic price of flat Rs. 75,54,360/- excluding taxes and other charges.
6. The complainants submitted that after a gap of 6 months from the date of booking dated 21.12.2013 of the flat, the promoter/developer offers to provide the buyer's agreement. The complainants were allotted unit no. 1704, 17<sup>th</sup> floor, A tower in project called Supertech Hues situated at Sector-68, Gurgaon. The builder buyer agreement was executed on 20.06.2014 for unit no. A- 1704 for total consideration of Rs. 87,23,360/- inclusive of club membership, development charges, PLC, IFMS, covered car parking. As per the buyer's



agreement the possession was to be given within 42 months i.e. by June 2017. A grace period of 6 months was given in case of delay, therefore possession was to be given not beyond than 48 months subject to unforeseen circumstances but in the present matter they have not even given any reason for unforeseen circumstances.

7. The complainants paid a total sum of Rs.64,55,268/- and paid the last instalment on 31.08.2017. The TDS was also deposited for the payments made towards instalments. The complainants have already paid 85% of the total basic cost as per the constructions linked payment plan & there was no delay in the instalments. The complainants had paid the amount upto 21<sup>st</sup> floor slab of the construction linked unit.
8. The complainants submitted that despite the grace period of 6 months which expired on January 2018, the project is still not complete. After the expiry of grace period the complainants wrote various correspondences through emails but there was no proper respondent and the developer did not honour the covenants of the buyer's agreement. The promoter has failed to fulfil his promise of timely possession, photographs of the site are also attached as annexure P-7.



9. The complainants submitted that the buyer's agreement however does not specify anywhere that in case of failure to deliver the timely possession of the unit, the buyer has the right to seek refund of the entire amount without any forfeiture. The promoter has nowhere mentioned any remedial measures to be taken in case of deficiency or failure of services. Therefore, this agreement is totally unfair and one sided as per section 18 of the Act, 2016.
10. The complainants submitted that the agreement mentions about the proportion of BSP to be paid as per construction linked plan floor wise construction and other charges like club house, school, PLC, covered car parking etc which was to be paid at the time of offer of possession but the respondents deducted the same from the deposited amount of the complainants as per construction linked plan and further on seeking explanation, it was informed that the portion of amount was adjusted in other facilities like club house , school, PLC, covered car parking for the project as assured by the developers. The respondent/builder adjusting the deposited amount in a secretive manner and even as per payment demand letters there is no mention of the same. On the contrary there is no development/construction of clubhouse, schools etc for the amount deposited by the complainants. The





photographs are attached for ready reference and the e-mail is attached in the manner in which amount stands deducted by the developer. The copy of email dated 02.01.2017 is attached as annexure P-8.

11. The complainants submitted that they sent the legal notice to the respondent for the refund of the deposited amount as they failed to timely deliver the possession of the flat as per buyers agreement.

12. **Issues to be decided**

- i. Whether the promoter/developer has failed to honour the terms and conditions of the buyers agreement for timely possession of the flat booked by the complainant as stipulated in the contract?
- ii. Is promoter being duly unfair and unjust in continuing to pursue the above mentioned policy in violation the spirit of RERA which has been in force in Haryana since August 2017. Should not the promoter have corrected long back the clauses of buyer agreement related to committing refund of the amount and align the rate of compensation therein as per Act, 2017?
- iii. Whether the covenants of the buyers' agreement are equivocal to the RERA Act. Where in there is no



condition, on failure to give the timely possession the developer is bound to refund the amount without forfeiting the same as per the Clause-33 of the buyers agreement? Whether this clause be amended in accordance with the RERA act?

- iv. Whether the action of the developer is justified for not even laying single brick for the construction of club house, health and recreation facilities, PLC, covered car parking and as stated in the brochure even after the gap of more than 4 and half years from the day of booking and the installments are being paid for the same as per their own email dated 02.01.2017?
- v. Whether the developer failed to comply with the obligation imposed on him under RERA act/ rules and regulation made here under?
- vi. Whether the complainants be suitably compensated for damages under mental agony and physical harassment?
- vii. Whether the developer should refund the deposited amount by the complainants at the same punitive rate as charged by the developer from the respective date of deposit?





13. **Relief sought**

- i. To refund the entire deposited amount, amounting to Rs. 64,55,268/- with an interest @ 18 % compounding quarterly till its actual realization of complete amount within 90 days according to section 18 of the real estate act, 2016, read with rule 15 and 16 of the HRERA Rules, 2017.

**Respondent's reply:**

The respondent has raised various preliminary objections and submissions of this hon'ble authority. They are as follow:

14. The respondent submitted that the power to adjudicate the compensation under section 12,14,18,19 has been vested in the judicial officer which shall be appointed by the appropriate government. As per section 71, this authority has no jurisdiction to try the present complaint.
15. The respondent submitted that the project "Supertech Hues" is registered under the HRERA vide registration certificate no. 182 of 2017 dated 04.09.2017. The authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project on or before the year 2021 but the tower A has



almost been completed/ developed. The respondent is expected to provide offer of possession by December 2019.

16. The respondent submitted that in the present complaint that the possession of the said premise was proposed to be delivered by the respondent to the allottee within 3 and half years from the date of booking i.e. by June 2017. However, the completion of the building is delayed 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 24 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.

17. The respondent submitted that the said project will be completed by the year 2021. The current status of the tower A is that almost 60-65% of the building has been constructed and only internal development is yet to be completed/ developed. The respondent is expected to provide offer of possession by December 2019. The photographs of the current status of the tower are attached as annexure R2.



**Reply on merits:**

18. The respondent submitted that the said demand was made as per the schedule of payment plan as it was construction linked plan which was agreed by both the parties at the time of booking the flat. All the payments demanded by the respondent from time to time were according to the completion of the milestone. There is no malafide intention of the respondent to defraud the money from their allottees.
19. The respondent submitted that the complainants can only be entitled to claim Rs. 5/- per sq. ft. of super area of the allotted unit per month for any delay in handing over the possession of the allotted unit. The respondent today also has a reputed stand in the economic market and has completed many projects in India. Also, admitted that the possession of the said flat was proposed to be given by January 2018 but due to reason which is beyond the control of respondent.
20. The respondent submitted that the said email has been sent with malafide intention and just to create evidence. The complainants are well aware of the status of the project and it has almost been completed.
21. The respondent submitted that no refund can be made at this stage when almost 60-65% of the project has been completed.



If refund, order is issued, the respondent will suffer irreparable loss and great inquiry.

## 22. Determination of issues

- i. With respect to the **first issue** raised by the complainants, the promoter/developer has failed to honour the terms and conditions of the buyers agreement as the promoter has not delivered the possession of the flat within the prescribed time period but the promoter has failed to deliver the same. As per clause 24 of builder buyer agreement, the possession of the flat was to be handed over by June 2017 plus six months grace period. The clause regarding the possession of the said unit is reproduced below:

*"24. Possession of unit*

*The possession of the unit shall be given by December 2017 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, to cover any unforeseen circumstances."*

Therefore, the promoter has failed to comply with clause 24 of the BBA and the possession has been delayed by 10 months. As far as the penalty clause in case of delay in possession is concerned which is Rs.



5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in *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.”*

- ii. With respect to the **second and third issue** raised by the complainants, as per the provisions of RERA, the agreements executed prior to RERA would be enforceable and not affected by the enactment of RERA Act. The enforcement of Act does not affect the validity of such existing agreements for sale between promoter and allottee in respect of the apartment executed prior to the stipulated date of due registration under section 3(1) of the Act
- iii. With respect to the **fourth issue** raised by the complainants, the action of the developer is unjustified for



delaying the delivery of possession as the possession was to be delivered by December,2017 and the promoter has failed to construct the project as per the construction linked plan.

- iv. With respect to the **fifth issue** raised by the complainants, The promoter has registered the said project with HRERA, Gurugram. As per the registration certificate, the promoter has declared to complete the construction of tower A by December,2019. However, as per the agreement of sale entered between the allottee and the promoter, the promoter was liable to deliver the possession by December,2017. Therefore, the promoter is in violation of the terms and conditions of the agreement to sale.
- v. With respect to the **sixth issue** raised by the complainants, separate complaint to be filed to seek compensation to the adjudicating officer.
- vi. With respect to the **seventh issue** raised by the complainants, the respondent shall refund the money received by the respondent from the complainant by way of advance is ordered to be refunded along with prescribed





rate of interest i.e. 10.45% per annum as per rule 15 of the rules ibid and not the punitive interest.

23. As the possession of the flat was to be delivered by December, 2017 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*"11.4 The promoter shall—*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*

24. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:



*“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.”*

It has been 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.*

### **Jurisdiction of the authority**

25. The authority has complete jurisdiction to decide the complaint with 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 complainant at a later stage.

26. Keeping in the view of the authority as per clause 24 of the agreement, the possession of the flat was to be handed over by December 2017 plus six months grace period. The respondent itself has admitted that it was a pre-launch booking as the complainants had booked the unit on 21.12.2013 and the



licence was obtained by the respondent on 26.12.2013. However, at that time, they had no valid licence. It is a clear case of cheating/fraud where a number of buyers had been hoodwinked alluring them by showing dream homes while printing very glossy broacher as well as the advertisements put in the newspapers. It has also been alleged that the builder has constructed only structure of the apartments and no tangible development has taken place at the site.

#### **Decision and directions of the authority**

27. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is directed to give the refund of the money received by the respondent from the complainant by way of advance is ordered to be refunded alongwith prescribed rate of interest i.e. 10.45% per annum as he has cheated/defrauded the innocent buyers as mentioned above. Besides this, the project is lying abandoned, the money be refunded alongwith the interest @ 10.45% per annum within a period of 90 days.

28. The complaint is disposed of accordingly.



29. The order is pronounced.
30. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated 16.10.2018



HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 16.10.2018
Complaint No.	505/2018 Case titled as Mr. Devender Singh Babla & Anr V/s M/s Supertech Ltd.
Complainant	Mr. Devender Singh Babla & Anr
Represented through	Complainant in person with Shri Attar Singh, Advocate.
Respondent	M/s Supertech Ltd.
Respondent Represented through	Shri Rishabh Gupta, Advocate for the respondent.
Last date of hearing	6.9.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings**

Counsel for the complainant stated that the BBA inter-se the parties was executed on 20.6.2014. As per clause 24 of the agreement, the possession of the flat was to be handed over by December 2017 plus six months grace period. Respondent itself has admitted that it was a pre-launch booking as the complainant had booked the unit on 21.12.2013 and the licence was obtained by the respondent on 26.12.2013. However, at that time, they had no valid licence. It is a clear cut case of cheating/fraud where a number of buyers had been hoodwinked alluring them by showing dream homes while printing very glossy broacher as well as the advertisements put in the newspapers. It has also been alleged that the builder has constructed only structure of the apartments and no tangible development has taken place at

the site, as such, in view of the facts and circumstances of the matter, the refund of the money received by the respondent from the complainant by way of advance is ordered to be refunded alongwith prescribed rate of interest i.e. 10.45% per annum as he has cheated/defrauded the innocent buyers as mentioned above. Besides this, the project is lying abandoned, the money be refunded alongwith the interest @ 10.45% per annum within a period of 90 days. The complaint is disposed of accordingly. Detailed order shall follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
16.10.2018