

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

Complaint No. : 187 of 2018
Date of First hearing : 24.05.2018
Date of Decision : 30.10.2018

1. Mr. Sumit Kumar
2. Smt. Monica Anand Kumar
R/o B-42, Ground Floor, Shanker Garden,
Vikaspuri, New Delhi-110018.

...Complainants

Versus

M/s Supertech Ltd.
Regd. Office at: 1114, 11th Floor, Hemkunt
Chamber, 89, Nehru Place, New Delhi-
110019.

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Complainant in person with
Smt. Monica Anand Kumar

Advocate for the complainants

Mr. Oshin

Advocate for the respondent



ORDER

1. A complaint dated 24.04.2018 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. Sumit Kumar and Smt. Monica Anand Kumar, against the promoter M/s Supertech Ltd., on account of violation of clause 24 of the buyer developer agreement executed on 19.06.2015 for unit no. 0704, on 7th floor, tower no. N, with a super area of 1430 sq. ft. 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”, Revenue Estate, Village Badshahpur, Sector 63, Gurugram
2.	Unit no.	0704, 7 th floor, tower N
3.	Unit area	1430 sq ft
4.	Registered/ not registered	Registered (182 of 2017 dated 04.09.2017)
5.	Nature of real estate project	Group housing colony
6.	DTCP license	106 & 107 of 2013 dated 26.12.2013
7.	Date of buyer developer agreement	19.06.2015
8.	Payment plan	Subvention payment plan (as per annexure- 25, pg 82 of the complaint)
9.	Total consideration amount	Rs. 1,06,31,780/- (as per agreement, pg 41



		of the complaint)
10.	Total amount paid by the complainant	Rs. 99,35,073/-
11.	Date of delivery of possession from the date of execution of buyer developer agreement	Clause 24- July 2018+ 6 months grace period, i.e. January 2019
12.	Delay for number of months/ years upto date 30.10.2018	Premature complaint
13.	Penalty clause as per buyer developer agreement dated 19.06.2015	Clause 24 i.e. Rs.5.00/- per sq ft of super area per month for the period of delay

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A buyer developer agreement dated 19.06.2015 is available on record for unit no. 0704, 7th floor, tower N according to which the possession of the aforesaid unit was to be delivered by July 2018 and 6 months grace period, i.e. 31st January 2019.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared through his counsel on 24.05.2018. The case came up for hearing on 24.05.2018, 11.07.2018, 28.08.2018, 06.09.2018, 20.09.2018 and 28.09.2018. The reply has been filed by the respondent on 11.07.2018.



Facts of the complaint

5. On 10.11.2014, the complainants booked a unit in the project named "Supertech Hues", Revenue Estate, Village Badshahpur, Sector 63, Gurugram by paying an advance amount of Rs 4,00,000/- to the respondent. Accordingly, the complainants were allotted a unit bearing 0704 having area of 1430 sq. ft. on 7th floor, tower N.
6. On 19.06.2015, buyer developer agreement was entered into between the parties wherein as per clause 24, the construction should have been completed by July 2018 + 6 months grace period from the date of execution of agreement, i.e. 31st January, 2019. On 23.03.2018, the complainants visited the construction site and were shocked to find out that the construction work has been stopped due to paucity of funds.
7. The complainants submitted that the highlight of the advertisement was "Pay 20% only under subvention scheme", whereby the complainants were allured and solicited to book the abovementioned flat. After booking the flat, the complainants applied for Home Loan from HDFC Ltd. and on the basis of their creditability, the bank approved a housing loan for Rs. 55,00,000/- vide letter dated 23.01.2015.



The total payment made by the complainants to the respondent till 23.04.2018 is Rs. 99,35,073/-. Also, by way of the MoU between the parties dated 19.06.2015, the responsibility to pay EMI to HDFC Ltd. till possession is of the respondent only. However, committing a breach of the said memorandum, the respondent failed to make 2 Pre-EMI for the months of March and April'2018 (EMI of Rs. 76,937/- per month) to HDFC and consequently HDFC Ltd. charged them from the saving account of complainant no.1.

8. The complainants submitted that despite repeated calls, meetings and requests to the respondent, no definite commitment was shown to timely completion of the project nor any heed was paid to repeated demands of payment of EMIs and thus, no appropriate action was taken to address the concerns and grievances of the complainants. Complainants further submitted that given the inconsistent and lack of commitment to complete the project on time and unfair and restrictive trade practices, the complainants decided to terminate the agreement.

9. As per clause 24 of the buyer developer agreement, the company proposed to hand over the possession of the said



unit by 31st January, 2019. The clause regarding possession of the said unit is reproduced below:

“24 - 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/- per sq ft of duper 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.....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.....”

10. As per clause 3 of the tripartite agreement dated 19.06.2015 between the complainants, respondent and HDFC Ltd., the builder assumes the liability of payments. The aforementioned clause is reproduced below:

“3-The borrower has informed HDFC of the scheme of arrangement between the borrower and the builder in terms whereof the builder hereby assumes the liability of payments under the loan agreement as payable by the borrower to HDFC from date of first disbursement till 28th Feb, 2017 (the period be referred to as the “liability period” and the liability be referred to as “assumed liability”). It is however agreed that during the liability period the repayment liability is joint and several by and between the borrower and the builder.....”



11. Issues raised by the complainant

- I. Whether the respondent failed to pay 2 pre EMIs for the month of March and April 2018 to HDFC Ltd. under subvention scheme in breach of the MoU dated 19.06.2015 and thus, liable to pay to the complainants a sum of Rs. 1,53,874/- for the 2 EMIs alongwith compound interest @ 18% p.a.?
- II. Whether the respondent is liable to refund along with interest @ 18% p.a. on the total amount of Rs 99,35,073/- paid by complainants?
- III. Whether the complainants are entitled to damages/compensation and litigation expenses?
- IV. Whether the respondent would be able to handover the possession of the said flat to the applicants by agreed time?

12. Relief sought

- I. Direct the respondent to remit the amount paid by the complainants for the 2 EMIs for the months of March and April 2018 amounting to Rs. 1,53,874/- to the complainants alongwith interest at 18% from the date of the payment.



- II. Direct the respondent to refund the amount paid by the complainants till date, i.e. Rs. 99,35,073/- towards the cost of the said flat, together with simple interest @ 18% from the date of payment of instalments made by the complainants till the date of payment of entire amount by the respondent to the complainants.
- III. Direct the respondent to pay a sum of Rs.5,00,000/- to the complainants towards damages/compensation for the deficient services, restrictive and unfair trade practices, and towards physical and mental torture, agony, discomfort and undue hardship suffered by the complainants.
- IV. Direct the respondent to pay a sum of Rs. 1,00,000/- towards the cost of litigation.

Respondent's reply

13. The respondent stated that the present complaint is not maintainable in law or facts. The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The project received registration certificate from HARERA on 04.09.2017 and the offer of possession would be issued to the complainants around June



2020. Moreover, the respondent is willing and ready to transfer booking of the complainants in an equivalent alternative apartment in one of its project 'ARAVILLE' located in Sector 79, Gurugram, which is at a distance of approx.. 4 kms from the project in question and is almost ready. This project has been inspected by the court appointed Local Commissioner Mr. Suresh Kumar Verma and as per his site inspection report dated 14.06.2018, the project is almost ready. The flats can be handed over to buyers post issuance of occupancy certificate.

14. The respondent submitted that the possession has been delayed due to supervening events over which the respondent has no control, therefore, no deficiency or unfair trade practices have been committed by the respondent. It was agreed between the parties vide clause 24 of the buyer developer agreement that the apartment is reasonably expected to be delivered by July 2018 subject to other clauses and the date of possession shall automatically get extended on account of delay caused due to force majeure conditions or judicial pronouncement which have been elaborated in clause 43 of the agreement.



15. The force majeure circumstances were 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 the 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 news of the introduction of RERA almost killed fresh sales thereby causing huge crunch of finances.

16. Respondent further submitted that in addition to the above, active implementation by the government of alluring and promising social schemes like NREGA and JNNURM further led to shortage of labourers in the real estate market as the labours were tempted to return to their respective states due to guaranteed employment under these schemes. Also, there has been a heavy shortage of supply of construction material, i.e. river sand and bricks etc. throughout Haryana, pursuant to the order of the Hon'ble Supreme Court of India in the case



Deepak Kumar etc. v. State of Haryana (27 February 2012) and consequently, the construction progress slackened.

17. The respondent undertakes to handover the booked apartment to the complainants at the earliest along with compensation for delay as per the builder buyer agreement or as per the orders of the authority.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

18. With respect to the **first issue** raised in the complaint, it can be drawn out from the summary of accounts of the complainant no.1 dated 08.04.2018 attached in annexure 26 that an amount of Rs. 76,937/- has been deducted twice from the account of the said complainant on dates 05.03.2018 and 05.04.2018. Thus, this clearly shows that the respondent failed in depositing the said EMI, as a result of which the amount of EMI's for the month of March and April 2018 were deducted from the complainant no.1's account. This shows failure on the part of respondent in paying the 2 EMI's. Thus,



the respondent is liable to pay two installments of pre-EMI along with cost of Rs. 3,000/- to the complainants immediately.

19. With respect to **second issue**, as per the buyer developer agreement dated 19.06.2015, the due date of possession of the unit in question is 31st January, 2019. Accordingly, the complaint is premature. Further, as per the inspection report of the Local Commissioner dated 14.06.2018, the project is almost ready. Also, the project is registered with the authority and as per registration certificate, the due date of completion of the project is 31.12.2021. Thus, the complainants are not entitled to refund of the amount paid by them. However, the complainants are eligible for interest at the prescribed rate of 10.45% per annum on account of delayed possession which the respondent shall be paying to the complainants after the due date of possession till the actual handing over of possession.



20. With respect to **third issue**, the complaint is premature. Also, the authority does not have the power to grant compensation, the complainants can file a separate application before the adjudicating officer in order to seek compensation or

damages under section 71 of RERA, 2016 read with rule 29 of the HRERA rules, 2017.

21. With respect to **fourth issue**, the due date of possession is 31st January, 2019. It is pertinent to mention here that the respondent has submitted that the project in question is RERA registered and the respondent would offer the possession to the complainants around 31.12.2021. In such event, the complainants are entitled to get delayed possession interest at the prescribed rate from the due date of possession till the actual handing over of possession. However, the complainants are free to approach the authority in case of failure in handing over possession on the committed date as per RERA registration, i.e. 31.12.2021 in order to seek appropriate remedy.
22. 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 by the authority under section 37 of the Act ibid to the



promoter to comply with the provisions and fulfil obligation 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.

23. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

24. **Jurisdiction of the authority-** The project “Vatika India Next” is located in Park B1, West Street, Sector 85-B, Vatika India Next plots, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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.



25. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that it has been alleged by the complainants that the respondent/promoter has defaulted in making payment of pre-EMI on account of subvention arrangement, thus the authority has taken a serious view in this context. Respondent is directed to fulfill his subvention commitment of depositing pre-EMI before the 2nd day of every month failing which the respondent shall be liable for cost @ Rs. 3,000/- per default to be paid by the respondent. Respondent is also liable to pay two installments of pre-EMI along with cost of Rs. 3,000/- to the complainants immediately. Further, as per clause 24 of the agreement, the possession of the unit booked by the complainants was to be delivered within 36 months + 6 months grace period i.e. 42 months which comes out to be January, 2019. The project is registered with the authority and as per the registration certificate, the due date of completion of the project is 31.12.2021. Thus, keeping in view the interest of other allottees and the status of the project, it will not be appropriate to allow refund at this stage. However, the complainants are entitled to delayed possession interest at the prescribed rate of 10.45% per annum from the due date of possession, i.e. 31st January, 2019 on 10th of every succeeding month till the actual handing over of possession. In case of failure on the part of respondent in



handing over possession, the complainants can approach the authority to seek refund.

Decision and directions of the authority

26. 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:

- (i) The respondent is directed to give the physical possession of the said flat to the complainants on the date committed by the respondent in the registration certificate for handing over the possession, i.e. by 31.12.2021.
- (ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from the due date of possession, i.e. 31st January, 2019 till the handing over of possession, for every month of delay on the 10th of every succeeding month.
- (iii) If the possession is not given on or before the date committed by the respondent, i.e. 31.12.2021, then the complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. section 19(4) of the Act *ibid*.

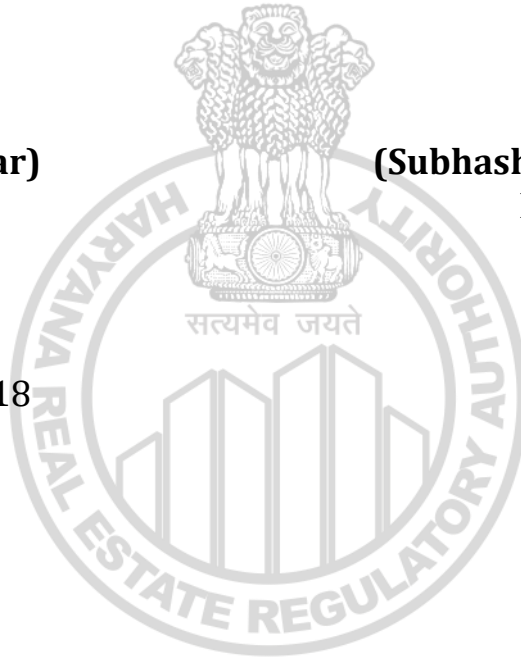


27. The complaint is disposed of accordingly.
28. The order is pronounced.
29. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 30.10.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 30.10.2018
Complaint No.	187/2018 Case titled as Mr. Sumit Kumar V/S M/S Supertech Ltd.
Complainant	Mr. Sumit Kumar
Represented through	Ms. Monika Anand Kumar, Advocate for the complainant
Respondent	M/S Supertech Ltd.
Respondent Represented through	Mr Rishab Gupta, Advocate for the respondent.
Last date of hearing	28.09.2018
Proceeding Recorded by	S L Chanana

Proceedings

As per clause 24 of the BBA inter se the respondent and the complainant, the possession of the unit booked by the complainant was to be delivered within 36 months + 6 months grace period i.e. 42 months which comes out to be January, 2019. The project is registered with the authority and as per registration certificate, the due date of completion of the project is July, 2020.

It has been alleged by the complainant that the respondent/promoter has defaulted in making payment of pre-EMI on account of subvention arrangement. The authority has taken a serious view in this context. There is no reason that the respondent/promoter should default on this count. Respondent is directed to fulfill his subvention

commitment on depositing pre-EMI before the 2nd day of every month failing which the respondent shall be liable for cost @ Rs.3,000/- per default to be paid by the respondent. Respondent is also liable to pay two installments of pre-EMI alongwith cost of Rs.3,000/- to the complainant immediately.

The complainant is also eligible for 10.45% of prescribed rate of interest on account of delayed possession which the respondent shall be paying to the complainant after due date of possession i.e. January 2019, by 10th of every succeeding month.

Complaint stands disposed off. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)