

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

**Complaint no. : 3497 of 2019**  
**First date of hearing : 08.11.2019**  
**Date of decision : 27.10.2020**

1. Mr. Anshul Jain
2. Mrs. Shekhar Jain  
Both r/o: - House no. 603/4,  
Patel Nagar, Gurugram

**Complainants**

**Versus**

1. M/s Supertech Limited.  
Office at: 1114, 11<sup>th</sup> floor  
Hamkunt Chambers, 89,  
Nehru Place, New Delhi- 110019

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Subhash Chander Kush

**Chairman  
Member**

**APPEARANCE:**

Sh. Shekhar Jain

Father of the Complainants  
in person

Sh. Bhrigu Dhani

Advocate for the respondent

**ORDER**

1. The present complaint dated 29.08.2019 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 as provided under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se them.

- The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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" in Sector- 02, Sohna Road Gurugram.
2.	Project area	18.37 acres [as per RERA Registration]
3.	Nature of the project	Residential 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	<b>Registered vide no. 258 of 2017 Dated 03.10.2017</b>
7.	RERA registration valid up to	02.10.2020
8.	Execution of first allotment letter	24.08.2016 [page 45 of complaint]
9.	Execution of revised allotment letter	28.07.2017 [ page 65 of complaint]
10.	Revised allotment letter unit detail	R1450N502A, 1 <sup>st</sup> floor, Tower N502A

		[Page 66 of complaint]
11.	Payment plan of both unit	Construction linked payment plan [Page 46 & 66 of complaint]
12.	Unit measuring of second allotment letter	1375 sq. ft. [super area]
13.	Total consideration as per revised allotment letter	Rs.55,68,750/- [Page 66 of complaint]
14.	Total amount paid by the complainants as per receipt information alleged by complaint	Rs.24,61,050/- [As per alleged by complaint and written argument]
15.	Due date of delivery of possession as per clause L (26) of the allotment letter: by October 2018 + 6 month's grace period (as per revised allotment letter)	30.04.2019 [Page 74 of complaint]
16.	Delay in handing over possession till the date of this order 27.10.2020	1 year 5 months and 27 days [Note: - Possession has not been handed over so far]

3. As per clause L (26) revised allotment letter dated 28.07.2017, the possession was to be handed over by October 2018 plus further grace period of 6 months. Clause L (26) of the allotment letter is reproduced hereinafter.

**“L. POSSESSION OF ALLOTTED FLOOR/APARTMENT: -**

*26. The possession of the allotted floor/Apartment shall be given by **OCT,2019** subject to force majeure conditions with an extended grace period of **6(Six)** months. The developer also agrees to compensate the Allottee(s) @ **Rs. 5.00/- (Five rupees only) per (Sq. ft.)** of area of the*

*Floor/Apartment per month for any delay in handing over possession of the Floor/Apartment beyond the given promised plus the grace period of 6(Six) months and up to the Offer Letter of possession or actual physical possession whichever is earlier."*

4. The complainants submitted that in the month of February 2016 the respondent through its marketing executives and advertisement through various medium and means approached the complainant with an offer to invest and buy an apartment in the proposed project of respondent, which the respondent was going to launch the project namely "HILL TOWN" in the plotted residential colony situated in Sector-2, Sohna, District Gurugram, under Licence No.124 of 2014. The respondent represented to the complainants it is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed apartment within the assured delivery date as per the best quality. The respondent had further assured the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned government authorities for the



development and completion of said project in time with the promised quality and specification. The respondent also showed the brochures and advertisement material of the said project to the complainants given by the Respondent and assured that the allotment letter as well as apartment buyer agreement for the said project would be issued to the complainants within one week of booking to be made by the complainants. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondent to book the residential apartment in the project of respondent.

5. The complainants further submitted that the respondent arranged the visit of its representatives to the complainants and they also assured the above as always assured by the respondent to the complainants, Relying upon those assurances and believing them to be true, the complainants booked a residential unit bearing No. R1450N502A/FLAT # N502A on first floor, admeasuring 1375 Sq. ft., super area having Basic Sales Price (BSP) Rs.55,68,750/- in the proposed project of the respondent on 18.02.2019 in the township to be developed by respondent.

6. The complainants further submitted that the respondent came to the complainants offering them another alternate independent floor of 3 BHK + 2 TOI, bearing No. N-502, Unit No. R1450N502A, on First Floor super area 1375 Sq. ft. in the project named Hill Crest Officer Enclave showing their malafide intention that are unable to construct the previous unit booked by the complainants because of some unavoidable circumstances. It was further assured by the respondent that the agreement of the newly booked unit would be commenced as it was in previous agreement dated 24.08.2016 and no sale consideration would be increased thereon.
7. The complainants submitted that he has made paid of amount of Rs.24,61,050/- to the respondent as on 19.09.2018 and no major amount on the part of the complainants is left to be paid by the complainants.

Hence, this complaint inter alia for the following reliefs: -

- (i) to pass an order to direct the Respondent to handover the possession of the said Flat to the complainant.
8. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

9. The respondent contested the complaint on the following grounds:

- I. The respondent submitted that the project "**Supertech Hill Town/Hill Crest**" is registered before this hon'ble authority. The registration no. is 258 of 3.10.2017 which is valid Upto October 2020.
- II. The respondent submitted that the possession of the said unit was proposed to be delivered by October 2018 with an extended grace period of 6 months as agreed by the parties to the agreement which comes out to be April 2019. The completion of the building is delayed by reason of non-availability of steel, other building materials, water supply, electric power, slow down strike etc. which is beyond the control of respondent and if non-delivery of possession is as a result of any act, aforementioned, it shall be entitled to a reasonable extension of time for delivery of possession of the said premise as per terms of the agreement executed by the complainant and respondent. There is no malafide intention of the respondent to get the delivery of project delayed. The respondent submitted that due to orders passed by the Environment Pollution (Prevention & Control) Authority, on amount of due to which the

construction stopped for few days, the high rise in pollution in Delhi NCR. Thus, one of the reasons behind delayed possession of the projects in the real sector market is the said orders as passed in past as well as present today by the hon'ble authority time to time.

III. The respondent further submitted that the project is a continuance business of the respondent and it will be completed by the year October 2020. The respondent also undertakes to give possession by the year October 2020.

10. The complainants further filed written argument on 18.09.2020 wherein reiterating the submission made in its complaint.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
12. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
13. Arguments heard.



14. 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 complainant at a later stage. The same has been upheld by the Hon'ble Punjab and Haryana High Court in CWP bearing no. 38144 of 2018 titled as *Experion Developers Pvt. Ltd. Vs State of Haryana & Others* decided on 16.10.2020.
15. On consideration of the documents, and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause L (26) of the revised allotment letter executed between the parties on 28.07.2017, possession of the booked unit was to be delivered within stipulated time i.e. period by 31.10.2018 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 30.04.2019. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the revised allotment letter dated 28.07.2017 executed between the parties. Further no OC/part OC has not been granted to the



project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

16. 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 the complainants are entitled to delay possession charges at rate of the prescribed interest @ 9.30% p.a. w.e.f. 30.04.2019 till the actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules, 2017.

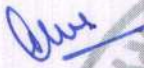
17. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:

- (i) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 30.04.2019 till the actual offer of possession;
- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iii) The respondent is directed to pay interest accrued from 30.04.2019 till the date of this order to the complainant within 90 days from the date of decision and subsequent interest to be paid on or before the 10<sup>th</sup> of each succeeding month;

- (iv) The respondent shall not charge anything from the complainant which is not the part of the allotment letter;
- (v) Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

18. Complaint stands disposed of.

19. File be consigned to registry.

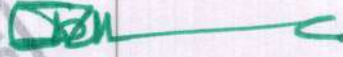
  
(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:27.10.2020

Judgement Uploaded on 01.12.2020.

  
(Dr. K.K. Khandelwal)

Chairman