BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 974 of 2020
First date of hearing : 15.04.2020
Date of decision : 27.10.2020

1. Mr. Sushant Updhyay
2. Mrs. Reeta Raina
Both R/o: -1001, Tower-12, Orchid Petals, Sohna Road, Near Omaxe City Center, Sector-49, Gurugram 122002

Complainants

Versus

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

Respondent

CORAM:
Shri K.K. Khandelwal — **Chairman**
Shri Subhash Chander Kush — **Member**

APPEARANCE:
Sh. Sumit Mehta — Advocate for the complainants
Sh. Bhrigu Dhami — Advocate for the respondent

ORDER

1. The present complaint dated 13.03.2020 has been filed by the complainants/allottees 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.

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	"Supertech Hues", Sector- 68, Gurugram.
2.	Project area	32.83 acres (as per the RERA Registration)
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	106 of 2013 and 107 of 2013 dated 26.12.2013 valid till 25.12.2017
5.	Name of licensee	Sarv Realtors Private Limited
6.	RERA Registered/ not registered	**Registered vide no. 182 of 2017 dated 04.09.2017** **(Tower No. A to H, K, M to P and T, V, W)**
7.	RERA registration valid up to	31.12.2021
8.	Unit no.	1504, 15th floor, Tower G/G [Page 11 of complaint]

9.	Unit measuring	1180 sq. ft. [super area]
10.	Date of execution of Buyer Developer Agreement	12.02.2018 [Page 10 of complaint]
11.	Payment plan	Construction link Payment Plan [Page 12 of complaint]
12.	Total consideration as per payment plan	Rs.27,86,492/- (Excluding taxes) [Page 12 of complaint]
13.	Total amount paid by the complainant	Rs.16,11,979/- [as per receipt information page no. 29 of complaint]
14.	Due date of delivery of possession as per clause E (23) of the buyer's Developer agreement: by August 2019 + 6 month's grace period. [Page 18 of complaint]	29.02.2020
15.	Delay in handing over possession till the date of order i.e. 27.10.2020	7 months and 27 days [**Note: -** Possession has not been handed over so far]
16.	Status of the project	Ongoing

3. As per clause E (23) of the buyer developer agreement, the possession was to be handed over by August 2019 plus further grace period of 6 months. Clause E (23) of the buyer developer agreement is reproduced hereinafter.

"E. POSSESSION OF UNIT: -

23. The possession of the unit shall be given by ***AUG 2019*** *or extended period as permitted by the agreement. However, the company hereby agrees to compensate the*

Allottee/s @ Rs. ***5.00/-(five rupees only)*** *per sq. ft. of super 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. However, any delay in project execution or its possession caused due to force majeure conditions and/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 statement before possession of the unit.....".*

4. The complainants submitted that the parties executed the buyer developer agreement on 12.02.2018. The respondent has failed to handover the possession of the unit to the complainant on the promised date of possession i.e. 29.02.2020 including grace period as per the buyer developer agreement. However, the respondent failed to give possession of the flat even till date.

5. The complainants submitted that since past 1.5 years, the respondent has remained dormant and has practically halted the developments works at the site project. The complainants further submitted that he has paid 60% of the total sale

consideration of the unit to the respondent and the respondent post reaping the benefits from the project qua collection of majority sale receipts from home buyers have abandoned the project site.

6. The complainants submitted that he has visited the office of the respondent company in respect of possession of his unit in terms of the buyer developer agreement but the respondent and its executive have neither been able to update the status regarding the excepted date of delivery of the said allotted unit.

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

i. To direct the respondent to pay equipment interest @ 2% per month of the entire amount paid by the complainant, from the date of individual payment, till handing over of possession of the said unit, along with specific direction to the respondent to handover possession of the said unit by executing a conveyance deed;

ii. To direct the respondent to pay interest as per the provision of the Act for the entire period of delay along with specific direction to the respondent to hand over

possession of the said unit by executing a Conveyance deed;

iii. To appoint an Independent Auditor at the project site for monitoring of the Development works to ensure delivery of the unit;

7. 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.

8. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

I. that Complainant booked an apartment being number no. R0380G01504 on 15th Floor, Tower G having a super area of 1180 sq. ft. (approx.) for a total consideration of Rs.27,86,492/- vide a booking form;

II. that consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer agreement dated 12.02.2018. Thereafter, further submitted that as per Clause 23 of the terms and conditions of the agreement, the possession of the apartment was to be given by August 2019, with an

additional grace period of 6 months, i.e. by February 2020;

III. that as per clause 23 of the agreement, compensation for delay in giving possession of the apartment would not be given to allottee akin to the complainant who has booked their apartment under any special scheme such as 'No EMI till offer of possession, under a subvention scheme.' Further, it was also categorically stipulated that any delay in offering possession due to 'Force Majeure' conditions would be excluded from the aforesaid possession period.

IV. That in interregnum, the pandemic of covid19 gripped the entire nation since March 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant. Thereafter, it would be apposite to note that the construction of the Project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.

V. that the said project is registered with this Hon'ble Authority vide registration no. 182 of 2017 dated 04.09.2017 and the completion date as per the said Registration is December 2021;

VI. that the delay if at all, has been beyond the control of the respondents and as such extraneous circumstances would be categorized as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.

VII. that the timeline stipulated under the flat buyer agreement was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavor to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction;

VIII. that apart from the defaults on the part of the allottee, like the Complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the Respondent:

- shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/ State Government under NREGA and JNNURM Schemes;
- that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

IX. that compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues' project of the Respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been

passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. Further, a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labor was let off and they traveled to their native villages or look for work in other states, the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.

9. The Authority vide order dated 07.10.2020 directed the respondent and his counsel to file reply within two weeks with an advance copy to the complainant subject to payment of cost of Rs.5,000/-to be paid to the complainants. The cost has been submitted on 27.10.2020 vide cheque no. 443526 dated 16.10.2020 to the authority.

10. 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.

11. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the parties is of

considered view that there is no need of further hearing in the complaint.

12. Arguments heard.

13. 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.

14. 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 E (23) of the buyer developer agreement executed between the parties on 12.02.2018, possession of the booked unit was to be delivered within stipulated time i.e. by 31.08.2019 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 29.02.2020. The authority is of the considered view that there is delay on the part of the

respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer developer agreement dated 12.02.2018 executed between the parties. Further no OC/part OC has 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.

15. 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 at rate of the prescribed interest @ 9.30% p.a. w.e.f. 29.02.2020 till the actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

16. The Authority in the ***complaint No. 2145 (earlier 2031) of 2020 titled as Deepak Choudhary Vs PNB Housing Finance Limited & others.*** filed by the complainant to safeguard his interest as an allottee in the event the project is auctioned and transferred to a 3rd party, vide order dated 11.09.2020 has casted a clean and unequivocal statutory responsibility on the promoter i.e. M/s Supertech Limited even after transfer of the physical possession of the Real Estate project; that the

erstwhile promoter will continue to pay outgoings and penal charges which were outstanding against the promoter at the time of transfer. Therefore, Supertech Limited will continue to be held liable in respect of its outstanding liabilities by virtue of Section 11(4)(a) of the Act and the incumbent promoter will be responsible for all the obligation under the Act. Hence, the above stated order dated 11.09.2020 should be read along with the order passed in this complaint for brevity and clarity.

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. 29.02.2020 till the actual offer of possession;

    ii. The complainants are 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 28.02.2020 till the date of order to the complainants within 90 days from the date of order and subsequent interest to be paid on or before the 10th of each succeeding month;

iv. The respondent shall not charge anything from the complainants which is not the part of the buyer developer agreement.

v. The existing promoter shall continue to be liable in respect to the outstanding payable by it to the complainants;

vi. The incoming promoter whosoever it may be shall be responsible for all the obligations as a promoter as per the provision of the Act.

18. Complaint stands disposed of.

19. File be consigned to registry.

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:27.10.2020

Judgement Uploaded on 19.11.2020