

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

Complaint no. : 780 of 2020
First date of hearing: 26.02.2020
Date of decision : 27.10.2020

1. Mamta Mittal
2. Sushil Kumar Mittal
Both R/o: - House No. C9/10,
First Floor, Block-C, RD City,
Sector-52, Gurugram

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
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Ms. Mamta Mittal
Sh. Sushil Kumar Mittal
Sh. Bhrigu Dhani

Complainant no. 2 in person
Advocate for the respondent

ORDER

1. The present complaint dated 12.02.2020 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 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	"Hill Town", Sector 2, Sohna Road, Gurugram.
2.	Project area	100.36875 acres [as per land schedule detail provided in the 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
7.	RERA registration valid up to	30.06.2021
8.	Unit no. (as per the allotment letter)	R045T122204, 22 nd floor, Tower 12
9.	Unit measuring	1200 sq. ft. [super area]

10.	Date of execution of allotment letter	04.04.2015 [Page 12 of complaint]
11.	New unit no (as per memorandum of understanding)	2002, 20 th floor, Tower- T2 [Page 31 of complaint]
12.	Payment plan	Subvention Payment Plan [Page 13 of complaint]
13.	Total consideration	Rs.63,38,800/- [as per payment plan Page 13 of complaint]
14.	Total amount paid by the complainant	Rs. 66,61,290/- [as per statement of payment received]
15.	Due date of delivery of possession as per clause I (25) of the allotment letter: by March 2019 + 6 month's grace period. [Page 19 of complaint]	30.09.2019
16.	Delay in handing over possession till the date of order i.e. 27.10.2020	1 years and 27 days [Note: - Possession has not been handed over so far]
17.	Status of the project	Ongoing

3. As per clause I (25) of the allotment letter, the possession was to be handed over by March 2019, plus further grace period of 6 months. Clause I (25) of the allotment letter is reproduced hereinafter.

“I. POSSESSION OF ALLOTTED FLOOR/APARTMENT

*25. The possession of the allotted floor/apartment shall be given by **March 2019** with an extended grace period of 6(Six) months. The developer also agrees to compensate*

the Allottee(s) @Rs. 5.00/- 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 period plus the grace period of 6(Six) months Upto the Offer Letter of possession or actual physical possession whichever is earlier”

4. The complainants submitted that the respondent/promoter company had earlier issued an allotment letter dated 04.04.2015 in favour of Mrs. Mamta Mittal and Mr. Sushil Kumar Mittal for unit no. R045T122204, 22nd floor, tower T12, Sector-2, Sohna Road Gurugram. They received a mail from the respondent/promoter company stating that the booked tower and their unit in the project are being swapped. After 3 months the respondent/promoter company shifted their unit to a new unit no. 2002, tower-T2 in the same project. They received confirmation mail dated 09.05.2016 from the respondent/promoter company after which both the parties signed revised subvention MOU for the new unit as well.
5. The complainants submitted that the parties executed the allotment letter on 04.04.2015. The respondent till date has failed to handover the possession of the unit to them.
6. The complainants submitted that there were issues with the project from very beginning and these facts were intentionally



hidden from them by the respondent. They wished to get out of the project then also, but due to disbursement of loan of almost 80%. By bank, they were bound to continue with the project. They were also assured by the respondent company that there wouldn't be any sort of hassle in the future regarding this project.

7. The complainants further submitted that they contacted and asked for the refund of their EMIs from Supertech, which were initially hesitant to refund it back but after a long mail exchange and pressure from their side the promoter started giving their per EMIs cheque but that too lasted for a while as after receiving just two cheques further EMI payments were stopped by Supertech and then on 29-11-2018 they received a mail from Supertech saying that it will not be able to provide them the EMI cheques rather it offered them 3 options and they were requested to opt for any of the below options:-

- a) Shift to ready to move-in inventory/ nearing possession unit. Please visit our office to check inventory.
- b) We will pay 1/3rd of your pre EMIs at present on monthly basis and balance will be settled at the time of possession.



c) You can opt for rental accommodation in our projects in which rent will be borne by the company till possession and pre-EMIs will be borne by you which will be settled at the time of possession. Which were as follows.

Hence, this complaint inter alia for the following reliefs

- i. direct the respondent to pay bare interest (pre-EMI) paid byer to bank along with interest as per RERA guidelines;
 - ii. direct the respondent to pay EMI with immediate effect till the offer of possession of our unit as per the MOU;
 - iii. direct the respondent to handover possession of the flat;
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. The submission made therein, in brief is as under: -
- I. that Complainant booked an apartment being number no. R045T122204, in, Tower T-12, 22nd having a super area of 1200 sq. ft. (approx.) for a total consideration of Rs. 63,38,800/- 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 04.04.2016. Thereafter, further submitted that as per Clause 25 of the terms and conditions of the agreement, the possession of the apartment was to be given by March 2019, with an additional grace period of 6 months.

- III. that as per clause 25 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 the consent of the complainant, the complainant was re-allotted a new apartment in the project bearing unit no. R045T2020002 in Tower T2, 20th Floor of the project vide agreement dated 10.05 2016. The terms of the agreement were the same, except that the date of possession was advanced to December of 2019, with an additional 6 months grace period.

- V. that the complainant had elected the Subvention scheme whereby the complainant, the Respondent and a third-party Bank had executed a Tripartite agreement. The TPA inter alia determined the liability of the complainants and the respondents qua the loan sanctioned by the Bank for the said apartment. As per Clause 4 of the TPA, the respondent was liable to pay Pre-EMI instalments for a period of 36 months from 01.06.2015 which ended on 31.05.2018, and thereafter it was incumbent on the Complainant to pay the EMI.
- VI. 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.



- VII. that the said project is registered with this Hon'ble Authority vide registration no. 97 of 2017 dated 24.08.2017 and the completion date as per the said Registration is June 2021;
- VIII. 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.
- IX. 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;
- X. 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.

XI. 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.

10. The Authority vide order dated 26.02.2020 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.10,000/- to be paid to the complainants. And despite of directions for filing of reply, the respondent failed to file the reply till date. The authority observed the same and in contravention of the above the respondent is again directed for a cost of Rs.5,000/- vide order dated 07.10.2020 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.
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.

12. The Authority on the basis of information and explanation and 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.
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 I (25) of the allotment letter executed between the parties on 04.04.2015, possession of the booked unit was to be delivered



within stipulated time i.e. by 31.03.2019 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 30.09.2019. 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 allotment letter dated 04.04.2015 executed between the parties. Further no OC/part OC has been granted to this 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. Under the subvention scheme there is a tri-partite agreement between the allottee, financial institution and developer wherein the financial institution is required to release the loan amount sanctioned in favour of the allottees to the builder as per the schedule of construction. It is an obligation on the part of the builder to pay the pre-EMI interest till the date of offer of possession to the financial institution on behalf of the allottee. Also, a MOU is entered between the buyer and the builder.
17. In the instant complaint, the allottees and the developer entered into a MOU dated 13.05.2016 whereby the developer as per clause (b) has undertaken to pay the pre-EMI till offer

of possession with regard to the booked unit/flat issued to the buyer. The said clause is reproduced as under:

“(b) That the tenure of this subvention scheme as approved by Indiabulls Housing Finance Limited is 36 months. The developer expects to offer of possession of the booked unit to the buyer by that time. However, if due to any reason, the possession offer of the booked unit gets delayed, then the Developer undertakes to pay the pre-EMI shall continue till offer of possession with regards to the booked flat is issued to the buyer”

Further, clause (e) of the MoU provides that from the date of offer of possession letter the subvention scheme shall be treated as closed and the buyer shall be solely liable to pay the entire EMI of his bank. Also, clause (f) of the said MoU states as under:

“(f) That the present Memorandum of Understanding is in addition to the Allotment Letter executed between the parties and all other conditions/situations not covered under this MOU shall be governed by the terms and of the Allotment Letter and company policies.”

18. No doubt, it is the duty of the allottee to make necessary payments in the manner and within the time specified in the agreement for sale as per the obligations u/s 19(6) and 19(7) of the Act reduced in writing or as mutually agreed to between the promoter and allottee. But the MoU and Tri-partite agreement both stipulate that the payments are subject to handing over of the possession of the unit within stipulated period as per the agreement to sell. Therefore, the said documents being supplementary or incidental thereto are legally enforceable against the promoter. Hence, it cannot absolve himself from its liability from paying the pre-EMI's.
19. That in the *National Consumer Disputes Redressal Forum, New Delhi in the case of IDBI Bank Ltd. Vs. Prakash Chand Sharma & Ors., 2018* it was held that under the special payment plan, the buyer has no liability whatsoever towards paying any interest or pre EMIs till the offer of possession and all interest amount accrued during the period till the time of possession would stand waived of with respect to the buyer if it is proved that the builder violated the terms and conditions of contractual obligations contained in the BBA/Tri-partite agreement/ MoU respectively.



Further, in the case *of Bikram Chatterji vs. Union of India & Ors. Before the Hon'ble Apex court in Writ Petition no. 940 of 2017 wherein vide order dated 23.07.2019 (known as Amrapali Judgment)* it was held that when the builder fails to fulfil his obligations under the subvention scheme, thereby causing a double loss to the allottee then the court can intervene and the builder has to comply with the same when it is proved that there was diversion of funds.

20. Therefore, the terms and conditions of allotment and/or the BBA, MoU and Tri-partite agreement clearly shows that the developer is under liability to pay the pre- EMIs or interest part of the loan amount received and any non-compliance shall be in violation of Section 11(4) of the Act in the event promoters fails to keep its obligations under subvention scheme. In such cases the allottee has all the right to seek relief under the RERA Act under Section 31 which states that any aggrieved person may file a complaint with the authority or adjudicating officer for any violation or contravention of the provisions of RERA or the rules and regulations framed thereunder against any promoter or real estate agent.

21. 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 delayed possession at rate of the prescribed interest @ 9.30% p.a. w.e.f. 30.09.2019 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
22. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- I. The respondent is directed to pay delayed possession interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 30.09.2019 till the actual offer of possession after obtaining the Occupation Certificate by the respondent; on the rest of the amount which the complainant has paid from the pocket on amount of raising of loan as per provisions of section 18(1) of the Act, 2016;
 - 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 30.09.2019 till the date of this order to the complainant



- within 90 days from the date of decision and subsequent interest to be paid by the 10th 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.
23. Complaint stands disposed of.
24. File be consigned to registry.

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated:27.10.2020

Judgement Uploaded on 07.12.2020