

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

Complaint no. : 391 of 2020
First date of hearing : 26.02.2020
Date of decision : 27.10.2020

Mr. Anil Kumar Agarwal
S/o Late Shri Mange Ram Agarwal
R/o: - B-28, Sushant Apartments,
Sushant Lok- I, Block-C, Gurugram
Haryana- 122002

Complainant

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:

Sh. Venket Rao
Sh. Bhrigu Dhani

Advocate for the Complainant
Advocate for the respondent

ORDER

1. The present complaint dated 24.01.2020 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.

2. 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	"Araville", Sector- 79, Gurugram.
2.	Project area	10.00 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	37 of 2011 dated 26.04.2011 valid till 25.04.2019
5.	Name of licensee	M/s Tirupati Buildplaza Private Limited
6.	RERA Registered/ not registered	Registered vide no. 16 of 2018 Dated 13.10.2018 (Tower No. A to F)
7.	RERA registration valid up to	31.12.2019
8.	Date of execution of flat buyer's agreement	07.07.2012 [Page 24 of complaint]
9.	Unit no.	1105, 11 th floor, Tower D



		[Page 26 of complaint]
10.	Unit measuring	1295 sq. ft. [super area]
11.	Date of execution of addendum to the allotment letter	06.11.2014 [Page 52 of complaint]
12.	Payment plan	Construction linked Plan [Page 26 of complaint]
13.	Total consideration as per payment plan	Rs.75,64,698/- [Page 26 & 27 of complaint]
14.	Total amount paid by the complainant	Rs.60,52,330/- [as per receipt information page no. 23, 39 to 50 & 55, 56 of complaint]
15.	Due date of delivery of possession as per clause I (22) of the flat buyer agreement: by November 2014 + 6 month's grace period. [Page 31 of complaint]	31.05.2015
16.	Delay in handing over possession till date to till this order i.e. 27.10.2020	5 years 4 months and 27 days [Note: - Possession has not been handed over so far]
17.	Status of the project	Ongoing

3. As per clause I (22) of the flat buyer agreement, the possession was to be handed over by November 2014 plus further grace period of 6 months. Clause I (22) of the flat buyer agreement is reproduced hereinafter.

"I. POSSESSION OF UNIT: -

*22. The possession of the allotted unit shall be given to the Allottee(s) by the company by **NOV 2014**. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months to cover any unforeseen circumstances. The possession period clause is subject to timely payment by the Allottee(s) and the Allottee(s) agrees to abide by the same in this regard."*

4. The complainant is submitted that the parties executed the flat buyer's agreement on 07.07.2012. The respondent has failed to handover the possession of the unit to the complainant on the promised date of possession i.e. 31.05.2015 including grace period as per the flat buyer agreement. The respondent failed to give possession of the flat even till date.
5. The complainant is submitted that the complainant visited the site of the Project and was shocked to see that there was no progress in the construction work of the project, and it is nowhere at the stage of completion. The construction/development work of the project at the site was stalled since very long period. Thereafter, the Complainant time and again tried to contact the officers of the Respondent to seek the clarification regarding the status of the project, however, never received any positive reply from their side.

The complainant is huge amount of money are invested in the project.

6. The complainant is further submitted that the Complainant sent Email to the Respondents asking the status of his unit. The Respondent on 19.12.2018 apprised to the Complainant that they have received OC for the Tower B & C. the Complainant replied to that mail and raised his concern that the OC is for Tower B & C, however, his flat is in Tower D. The Respondent on 19.12.2018 replied to the Complainants mail and provided false assurance to the Complainant that the OC for Tower D is in Process.
7. The complainant submitted that the Respondent failed to hand over the possession as per the terms of flat buyer agreement. An Addendum to the allotment letter was executed between the parties on 06.11.2014 whereby the special payment scheme was offered by the respondent and the complainant accepted the same believing on the assurances given by the respondent. However, the respondent failed to handover the possession or provides compensation for delay possession to the complainant.

Hence, this complaint inter alia for the following reliefs



- (i) to direct the respondent to handover the unit of the complainant immediately along with prescribed rate of interest per annum for delay in handing over of possession;
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. 1105 on 11th Floor, Tower D having a super area of 1295 sq. ft. (approx.) for a total consideration of Rs. 75,64,698/- 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 07.07.2012. Thereafter, further submitted that as per Clause 22 of the terms and conditions of the agreement, the possession of the apartment was to be given by November 2014, with an additional grace period of 6 months, i.e. by May 2015;

- III. that as per clause 24 of the agreement, compensation for delay in giving possession of the apartment would not be given to those allottee only who honour the payment schedule and make the payment of all his/her dues, installment additional charges, PLC, etc. the payment plan agreed upon in the allotment letter.
- 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. RC/REP/HARERA/GGM/2018 dated 13.10.2018 and the completion date as per the said Registration is 31.12.2019. afterthat, the respondent company has

applied for an extension which process is still ongoing. It is submitted that Occupancy Certificate has already been applied for which respect to the subject tower and possession would be handed over by the end of December 2020.

- 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.

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, 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.
13. Thereafter, written argument dated 21.09.2020 has been filled by the complainant wherein they have made the following submission: -
 - i. that an addendum to the Allotment Letter was executed between the parties on 06.11.2014 whereby the Special Payment Scheme was offered by the Respondent and the Complainant accepted the same believing on the assurances given by the Respondent. The Complainant has paid more than 80% of the total sale consideration.
 - ii. that the Complainant vide email dated 19.12.2018 raised his concern over the delay in the project and failure of the Respondent in getting the OC for the Complainants tower. In response of which, the Respondent on 19.12.2018 provided false assurance to the Complainant that the OC for Tower D is in Process. The Complainant further again on 14.05.2019 sent an email to the Respondent asking about the status of his unit. In

reply, the Respondent assured that the possession of complainant unit would be handed over by August 2019.

- iii. that on 11.04.2020 (after filing of the complaint), the Complainant received a Pre-Possession letter from the Respondent whereby the Respondent raised a demand of Rs. 37,36,475/- which was unfair arbitrary and unacceptable for the Complainant. The Respondent sent the letter without obtaining the OC for the Complainants tower which is *non-est* in the eyes of law and Void-ab-initio.
- iv. that the Hon'ble Supreme court in its recent judgement dated 24.08.2020 in the Civil Appeal No. 6239 of 2019 namely "**WG. CDR. ARIFUR RAHMAN KHAN AND ALEYA SULTANA AND ORS. VS. DLF SOUTHERN HOMES PVT. LTD**" has held as follows:

"55. For the above reasons we have come to the conclusion that the dismissal of the complaint by the NCDRC was erroneous. The flat buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to flat buyers in regard to the provision of amenities. The reasoning of the NCDRC on these facets suffers from a clear perversity and patent errors of law which have been

noticed in the earlier part of this judgment. Allowing the appeals in part, we set aside the impugned judgment and order of the NCDRC dated 2 July 2019 dismissing the consumer complaint. While doing so, we issue the following directions:

(i) Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate;

(ii) The above amount shall be in addition to the amounts which have been paid over or credited by the developer at the rate of Rs 5 per square foot per month at the time of the drawing of final accounts; and

(iii) The amounts due and payable in terms of directions (i) and (ii) above shall be paid over within a period of one month from the date of this judgment failing which they shall carry interest at the rate of 9 per cent per annum until payment."

- v. that the Authority while adjudging a complaint of the same project "ARAVILLE" in the matter of "P. R. Bishnoi vs. Supertech Ltd." [Complaint No. 2255/2018] has directed the Respondent to pay the interest @ prescribed rate i.e. 10.75% per annum for delay from the due date of possession till the actual offer of possession. The relevant emphasis of the order is reproduced herein:

"19. After taking into consideration all the material facts produced by the parties, 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 parties in the interest of justice: -

- i. *The respondent is directed to pay interest at the prescribed rate i.e. 10.75% p.a. for every month of delay from due date of possession i.e. 01.02.2016 till offer of possession."*

- vi. That in another matter of the same project "ARAVILLE", "Sumit Kumar vs. Supertech Ltd." [Complaint No. 187/2018] the finding of the Ld. Authority are as follows:

"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.*"*

That in the light of the above facts and judgements, the complainant is also entitled for delay in handing over of possession.

14. Arguments heard.

15. 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.

16. 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 (22) of the flat buyer agreement executed between the parties on 07.07.2012, possession of the booked unit was to be delivered within stipulated time i.e. by 30.11.2014 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 31.05.2015. 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's agreement dated 07.07.2012 executed between the parties. As such 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. With respect to relief of GST, the complainant is at liberty to approach the appropriate forum.

17. 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. 31.05.2015 till the actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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

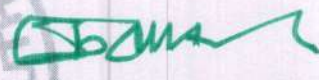
- (i) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 31.05.2015 till the actual offer of possession;
- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iii) The respondent is directed to pay interest accrued from 31.05.2015 till the date of order to the complainant within 90 days from the date of decision and subsequent interest to be paid on or before the 10th of each succeeding month;

- (iv) The respondent shall not charge anything from the complainant which is not the part of the flat buyer agreement.
- (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.

19. Complaint stands disposed of.

20. 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 01.12.2020.

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