

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 19.12.2018
Complaint No.	792/2018 Case Titled As Mr. Arun Kumar Ravindran V/S M/S Supertech Limited
Complainant	Mr. Arun Kumar Ravindran
Represented through	Complainant in person with S/Shri Mohinder Singh and Vinay K. Saini, Advocates.
Respondent	M/S Supertech Limited
Respondent Represented through	Shri Rishab Gupta Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	H.R Mehta

Proceedings

Project is registered with the authority.

Licence is under renewal.

Arguments heard.

Counsel for the complainant has submitted complainant seeks refund of entire amount deposited by him as the respondent has not delivered the possession of the flat in time. Counsel for the respondent has stated at bar that the project is 75% complete and they will be able to deliver the possession by June 2020. Keeping in view the circumstances stated above, the authority is not inclined to order refund of amount deposited by the complainant.

As per clause 25 of the Builder Buyer Agreement dated 23.7.2014 for flat/unit No.F2203, 22nd floor, Tower/Block-F in Supertech HUES, Sector-68, Gurugram, possession was to be handed over to the complainant by April 2017 + 6 months grace period which comes out to be October 2017. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.71,11,484/- with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f October 2017 till the date of offer of possession, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. In case the respondent failed to deliver the possession of the unit before the committed date, in that case the complainant shall be entitled to seek refund of the amount deposited by him.

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

Samir Kumar
(Member)
19.12.2018

Subhash Chander Kush
(Member)
19.12.2018

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

Complaint no. : 792 of 2018
First date of hearing : 19.12.2018
Date of decision : 19.12.2018

Mr. Arun Kumar Ravindran,
R/o. H.no. Dx-108, Kendriya Vihar,
Sector 56, Gurugram.

Complainant

Versus

M/s Supertech Ltd.
(Through its authorised signatory/director)
Regd. Office: 1114, 11th floor,
Hemkunt Chambers-89, Nehru Place,
New Delhi.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Arun Kumar Ravindran Complainant in person
Shri Mohinder Singh along Advocates for the complainant
with Shri Vinay K. Saini
Shri Rishab Gupta Advocate for the respondent

ORDER

1. A complaint dated 30.08.2018 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 complainant Mr. Arun Kumar Ravindran, against the promoter M/s Supertech Ltd.



on account of violation of the clause 25 of buyer developer agreement executed on 23.07.2014 in respect of flat/unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer developer agreement has been executed on 23.07.2014 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

- **Nature of the project- Group housing colony.**
- **DTCP license no.- 106 & 107 of 2013 dated 26.12.2013
89 of 2014 dated 08.08.2014
134-136 of 2014 dated 26.08.2014**



1.	Name and location of the project	"Supertech Hues", Sector 68, Gurugram.
2.	Project area	32.83 acres
3.	Registered/ not registered	Registered
4.	RERA registration no.	182 of 2017 dated 04.09.2017
5.	Date of completion as per HRERA registration certificate.	31.12.2021

6.	Flat/apartment/unit no.	F-2203, 22 nd floor, tower/block- F.
7.	Unit measuring	1180 sq. ft.
8.	Booking date	14.10.2013
9.	Date of execution of buyer developer agreement	23.07.2014
10.	Total consideration amount as per agreement dated 23.07.2014	Rs.83,71,720/-
11.	Total amount paid by the complainants till date	Rs.71,11,484/-
12.	Percentage of consideration amount	Approx. 84.9 percent
13.	Due date of delivery of possession as per clause 25 of buyer developer agreement i.e. by April 2017 + 6 months grace period	October 2017
14.	Delay in handing over possession till date of decision	1 year 1 month 19 days
15.	Penalty clause as per buyer developer agreement dated 23.07.2014	Clause 25 of the said agreement i.e. Rs.5/- per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit.
16.	Status of the project as per reply submitted by the respondent	The current status of the tower-F is that almost 75% of the building has been constructed. The respondent is expecting to provide offer of possession of tower-F by June 2020.



4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer developer agreement is available on record for the aforesaid unit/flat according to which the possession of the said unit is to be delivered by 31.10.2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.5/- sq. ft. of super area of the unit per month for the delay in handing over possession of the unit. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through its counsel appeared on 19.12.2018. The case came up for hearing on 19.12.2018. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. Briefly stated, the facts of the complaint are that the respondent has pre-launched a residential project by name "Supertech Hues" falling in Sector 68 of Gurugram in the year 2013 and invited application for sale of constructed flats by



way of issuing public advertisement in print media along with publications of brochures and pamphlets.

7. The complainant submitted that on the representations made by the respondent, the complainant booked residential flat on 22nd floor having super area of 1180 sq. ft. in the said project and made payment of Rs.7 lakhs vide cheque dated 11.10.2013 against pre-launching of project by the respondent. That the DTCP Haryana had granted license no. 106 and 107 of 26.12.2013 for development of group housing project falling in Sector 68, Gurugram.
8. The complainant submitted that buyer developer agreement was executed on 23.07.2014 between the complainant in respect of unit no. F-2203. As per the buyer developer agreement, the physical possession of the unit was to be delivered to the complainant by the respondent within 42 months i.e. April 2017. But the respondent had failed to deliver the physical possession of the unit no. F/2203 within stipulated time as per the said agreement. The complainant as on date paid has part consideration of Rs.71,11,484/-.
9. The complainant submitted that despite regular follow up the respondent had refused to refund on one pretext or the other pretext, therefore the complainant is left with no other efficacious remedy available except to file the present



complaint before the authority seeking refund of money invested along with penalty and interest charges for wilful breach of buyer developer agreement by respondent to the tune of Rs.1,02,69,114.13/-.

10. Issues raised by the complainant are as follow:

- i. **Whether the respondent had deliberately failed to complete the construction of the booked flat within the period of 42 months from the date of signing of the buyer developer agreement dated 23.07.2014 and has violated section 18 of the Act ibid?**
- ii. **Whether there has been deliberate or otherwise misrepresentation on the part of the developers for delay in starting the construction?**

Reliefs sought by the complainant

11. **The complainant is seeking refund of sale consideration of Rs.1,02,69,114.13 paid by the complainant to the respondent for violation of section 18(1)(a) of the Act ibid subsequent to cancellation of the buyer developer agreement dated 23.07.2014.**

Respondent's reply:

12. The respondent submitted that the project "Supertech Hues" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated



04.09.2017. The authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project on or before the year 2021 but the tower F has almost been completed/developed. The respondent is expected to provide offer of possession by June 2020.

13. The respondent submitted that the possession of the said premises was proposed to be delivered by the respondent to allottee by April 2017 with an extended grace period of 6 months as agreed by the parties to the agreement which comes out to October 2017. The completion of the building is delayed by reason of non-availability of steel and/or 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. The respondent shall be entitled to a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and respondent. The respondent and officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project delayed. It is also submitted that due to stagnation, sluggishness, down fall in real estate market, due to



demonetisation as well as coming into force of GST, speed of work/construction of every real estate sector market has been too slump which results in delay of delivery of possession as well as financial loss to the promoters.

14. The respondent submitted that the said project is a continuous business of the respondent and it will be completed by the year 2021. The current status of the tower-F is that almost 70% of the building has been constructed. The respondent is expected to provide offer of possession of tower-F by June 2020. The photographs of the current status are annexed as Annexure R2 with the reply. The respondent also undertakes to complete the project by the year 2021, as disclosed before the authority in the registration certificate. No refund at this stage can be made to the complainant when almost 70% of the tower is completed/developed.

15. The respondent submitted that when the parties have contracted and limited their liabilities, they are bound by the same and relief beyond the same could not be granted. Therefore, according to terms and conditions of buyer developer agreement no cause of actions arises for filing the present complaint. Clause 2 of the buyer developer agreement is herein reproduced below:



“2. The developer hereby agrees to pay penalty to the buyers @ Rs.5/- per sq. ft. of super area of the allotted unit per month for any delay in handing over possession beyond the given possession date plus grace period of 6 months and upto the offer of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstance....”

16. The respondent submitted that hence, the complainant is not entitled for any compensation claimed except for compensation for delayed possession as per clause 2 of the said agreement. Thus, the complaint may kindly be dismissed.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

17. With respect to the **first issue** raised by the complainant, as per clause 25 of buyer developer agreement, the possession of the flat was to be handed over by April 2017 plus six months grace period. The clause regarding the possession of the said unit is reproduced below:

“25. Possession of unit

The possession of the unit shall be given in 42 months i.e. by April 2017 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the allottee/s @ Rs.5/- per sq. ft. of super area of the unit per month for any delay in handing over the possession of the unit beyond the given period plus



the grace period of 6 months and upto the offer letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances...”

18. Accordingly, the due date of possession is October 2017 and the possession has been delayed by one year one months and nineteen days from due date of possession till the offer of possession. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the said flat as per clause 25 of buyer developer agreement is held to be very nominal and unjust. It has been observed that the terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been held in **para 181 of Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”



19. With respect to the **second issue** raised by the complainant, the complainant has not provided any supportive documents to prove that the respondent has misrepresented for delay in

starting the construction. Hence, this issue is answered in negative.

Findings of the authority

20. **Jurisdiction of the authority**-The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town & Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.



21. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

22. In the present complaint, the complainant is seeking refund of the amount paid by him along with the interest. However, keeping in view that the project has reached advanced stages and that the respondent has committed to complete the project duly by 31.12.2021 as per the RERA registration certificate, refund cannot be allowed. Moreover, for protecting the right of one allottee, right of other allottees who wish to continue with the project cannot be jeopardised by allowing refund in the present case. Further, the counsel for the respondent has stated at bar that the project is 75% complete and they will be able to deliver the possession by June 2020.

23. After taking into consideration all the material facts as adduced and produced by both 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 respondent in the interest of justice and fair play:

- (i) The respondent is directed to hand over the possession of the said unit by **31.12.2021** as committed by the respondent in HRERA registration certificate.
- (ii) The respondent is directed to pay the interest so accrued on the amount paid by the complainant i.e. **Rs.71,11,484/-** at the prescribed rate i.e. 10.75% for



every month of delay from the due date of possession i.e. 31.10.2017 till the actual date of handing over of the possession.

- (iii) The respondent is directed to pay accrued interest i.e. **Rs.8,67,114/-** to the complainant from the due date of possession till the date of decision, on account of delay in handing over of possession to the complainants within 90 days from the date of decision. Thereafter, the monthly payment of interest i.e. **Rs.63,707.05/-** till handing over of the possession, so accrues shall be paid by 10th of every succeeding month.

Principal amount paid by the complainant	Interest accrued up to date of decision	Monthly interest to be paid till handover of possession
Rs.71,11,484/-	Rs.8,67,114/-	Rs.63,707.05/-

24. The order is pronounced.
25. Case file be consigned to the registry. A copy of this order be endorsed to the registration branch for further proceedings.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.12.2018

(Subhash Chander Kush)

Member