

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 13.12.2018
Complaint No.	637/2018 Case Titled As Mr. Sumit Kumar & Anr V/S M/S Supertech Ltd.
Complainant	Mr. Sumit Kumar & Anr
Represented through	Ms. Gurupyari Dwivedi – complainant No.2 in person with Shri Hitesh Mankar, Advocate.
Respondent	M/S Supertech Ltd.
Respondent Represented through	Shri Rishab Gupta Advocate for the respondent.
Last date of hearing	27.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority and the revised date of delivery of possession is 31.12.2021 as per registration certificate.

Arguments heard.

As per clause 24 of Builder Buyer Agreement executed inter-se the parties on 28.10.2014 for unit No.0903, 9th floor, Tower-H, in project “Supertech Hues”, Revenue Estate, village Badshahpur, Sector-63, Gurugram, possession was to be handed over to the complainant by July 2018 + 6 months grace period which comes out to be **31.1.2019**. Complainant/buyer has already paid an amount of Rs.28,95,180/- to the respondent. However, respondent has failed in fulfilling his obligation as on date. Counsel for the

respondent has stated that 50% of construction work at the project is complete. It is a **dismal state of affairs** w.r.t. work at the project site. In these circumstances, the authority finds no option **but to order refund of the amount deposited** by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% per annum **after forfeiting 10% of the total consideration**. Amount shall be paid by the respondent to the complainant within a period of 90 days from the issuance of this order.

Accordingly, it is directed that the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum **after forfeiting 10% of the total consideration** within a period of 90 days from the date of this order.

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

Samir Kumar
(Member)
13.12.2018

Subhash Chander Kush
(Member)
13.12.2018

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

Complaint No. : 637 of 2018
Date of First hearing : 27.09.2018
Date of Decision : 13.12.2018

1. Mr. Sumit Kumar
2. Smt. Gurupyari Dwivedi
R/o 433/4, Garhi Kesari, Tehsil Ganaur,
District Sonapat-131101

...Complainants

Versus

M/s Supertech Ltd.
Regd. Office at: 1114, 11th Floor, Hemkunt
Chamber, 89, Nehru Place, New Delhi-
110019

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Smt. Gurupyari Dwivedi Complainant no.2 in person
Sh. Hitesh Mankar Advocate for the complainants
Sh. Rishabh Gupta Advocate for the respondent



ORDER

1. A complaint dated 01.08.2018 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 complainants Mr. Sumit Kumar and Smt. Gurupyari Dwivedi, against the promoter M/s Supertech Ltd., on account of violation of clause 24 of the buyer developer agreement executed on 28.10.2014 for unit no. 0903, on 9th floor, tower no. H, with a super area of 1180 sq. ft. in the project “Supertech Hues” for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the project	“Supertech Hues”, Revenue Estate, Village Badshahpur, Sector 63, Gurugram
2.	Unit no.	0903, 9 th floor, tower H
3.	Unit area	1180 sq ft
4.	Registered/ not registered	Registered (182 of 2017 dated 04.09.2017)
5.	Revised date of handing over possession as per RERA registration certificate	31.12.2021
6.	Nature of real estate project	Group housing colony
7.	DTCP license	106 & 107 of 2013 dated 26.12.2013
8.	Date of booking	29.09.2014
9.	Date of buyer developer agreement	28.10.2014
10.	Payment plan	Possession link plan (as per agreement, pg 28 of



		the complaint)
11.	Total consideration amount	Rs. 93,52,000/- (as per agreement, pg 28 of the complaint)
12.	Total amount paid by the complainants	Rs. 28,95,180/- (as per pg 23,24 of the complaint)
13.	Date of delivery of possession from the date of execution of buyer developer agreement	Clause 24- July 2018+ 6 months grace period, i.e. 31.01.2019
14.	Delay for number of months/ years upto date 13.12.2018	Premature complaint
15.	Penalty clause as per buyer developer agreement dated 28.10.2014	Clause 24 i.e. Rs.5.00/- per sq ft of super area per month for the period of delay

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A buyer developer agreement dated 28.10.2014 is available on record for unit no. 0903, on 9th floor, tower no. H according to which the possession of the aforesaid unit was to be delivered by July 2018 and 6 months grace period, i.e. by 31st January 2019.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 27.09.2018 and 13.12.2018.



The reply has been filed by the respondent and the same has been perused by the authority.

Facts of the complaint

5. On 29.09.2014, the complainants booked a unit in the project named "Supertech Hues", Revenue Estate, Village Badshahpur, Sector 63, Gurugram. Accordingly, the complainants were allotted a unit bearing no. 0903, on 9th floor, tower no. H, with a super area of 1180 sq. ft.
6. On 28.10.2014, buyer developer agreement was entered into between the parties wherein as per clause 24, the construction should have been completed by July 2018 + 6 months grace period, i.e. by 31st January, 2019.
7. The complainants submitted that they had made the payment in the year 2014 and religiously waited for the respondent to carry out the construction and offer possession. They were ready and willing to perform their part of the contractual obligations. However, over the period so many other innocent buyers in the same project started talking about the project having come to a virtual standstill because the promoters had diverted the money in some other project / place. It became apparent that there was very little progress at site and the



project was bound to get delayed substantially. This delay not only watered down the hopes of complainants for getting the possession of flat on time but this also affected their financial planning. The complainants further submitted that they also had personal family constraints on account of death of the real brother of the complainant no. 1. Looking at the entirety of facts and circumstances, the complainants therefore, requested the respondent to refund the payment made by them to the respondent. However, the respondent did not respond to such request.

8. The complainants submitted that the respondent has virtually made no progress for construction of flat in as much as even till date (July, 2018 when the possession of the flat was supposed to be handed over), even the super structure is not complete and there is only trivial activity at site. The inordinate delay can be gauged from the very fact that the respondent has not even completed the super structure which would have entitled it to raise monetary demand.

9. The complainants submitted that they have also visited the site and have taken some photographs in order to show to this hon'ble authority the sad state of affairs of the construction which was to be carried out by the respondent.



The fact of the matter is that the project has been totally neglected by the respondent and apparently the funds meant for the project have been diverted to some other project or for personal endeavour of the directors of the company. The hard-earned money of the complainants amounting to Rs. 28,95,180 which they had paid in October 2014 is virtually struck and rather misappropriated. The complainants are left high and dry. They have suffered immense financial constraints and mental agony and torture because of the conduct of the respondent.

10. The complainants further submitted that they have also reliably learned that the respondent is now in a process to further misappropriate the money of the innocent buyers including that of the complainants, by entering into sham sale transactions such as creating third party interest in the flats booked by the buyers. The respondent has completely failed in its contractual obligations and has flouted the rules and provisions of the Real Estate (Regulation & Development) Act, 2016 and of applicable rules of Haryana Real Estate Regulatory Authority. The respondent/promoters are therefore liable to be prosecuted in accordance with law.



11. The complainants submitted that they also sent a letter dated 06.07.2018 demanding back their money along with interest. The respondent was duly served with the letter but has not responded so far which shows malafide intention on part of the respondent.

12. **Issues raised by the complainants**

The relevant issues as culled out form the complaint are as follows:

- I. Whether it is obligatory on the part of the promoter and the owner to complete the project on time?
- II. Whether the promoter and owner have misappropriated the funds for their personal use?
- III. Whether the respondent is liable to refund along with interest on the total amount paid by complainants?

13. **Relief sought**

- I. Direct the respondent to refund the amount paid by the complainants till date, i.e. Rs. 28,95,180/- towards the cost of the said flat, together with interest @ 18% amounting to Rs. 19,10,700/- from the date of payment of instalments made by the complainants till the date



of payment of entire amount by the respondent to the complainants.

Respondent's reply

14. The respondent filed an application for rejection of complaint on the ground of jurisdiction stating that as the due date for possession of the flat is January, 2019 and thus, the cause of action shall arise only after January, 2019.
15. The respondent submitted that it is pertinent to mention that the project "Supertech Hues" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The authority had issued the said certificate which is valid for a period commencing from 4.9.2017 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 H has almost been completed/ developed. The respondent is expected to provide offer of possession by June 2020.
16. The respondent submitted that the completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials and/ or water supply or electric power 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 and in the aforesaid events, 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 complainants and respondent. The respondent and its 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, to the allottees.

17. The respondent further submitted that the said project is a continuance business of the respondent and it will be completed by the year 2021. The current status of tower- H is that almost 60-65 % of the building has been constructed. The respondent is expected to provide offer of possession of tower- H by June 2020. The respondent also undertakes to complete the project by the year 2021 and as per provisions of RERA, also had disclosed the additional information before the hon'ble authority while getting the project registered under RERA.

18. It is submitted by the respondent 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 builder buyer agreement no cause of action arises for filing of the present complaint.

19. The respondent submitted that the plea raised by the complainants for getting back out from the project is totally false and frivolous. No refund can be made at the stage where the tower has been almost completed upto 60 to 65%. The complainants have booked the flat at 9th floor and the tower has been constructed upto 21st floor, so such claim of refund by the complainants is untenable in the eye of law and it will cause prejudice to the respondent, if refund order is issued against the respondent.

20. The respondent denied that they have virtually made no progress for the construction of the flat or have abandoned the project. The respondent submitted that no third-party interest has been created by them. They have made considerable progress in the construction of the said project and the delay in handing over of possession was only on account of the circumstances beyond the control of the respondent. There is no malafide intention of the respondent to defraud money from their allottees. The respondent today



also has a reputed stand in the economic market and have completed many projects in India.

21. The respondent submitted that it is clear from the email annexed with the complaint that the complainants due to not having monetary / sufficient funds to pay the installment on completion of superstructure, wants to back out from the agreement, so that they may get safe from paying the installment on completion of superstructure.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

22. With respect to the **first issue** raised in the complaint, it is obligatory on the part of the respondent to handover possession as per the terms of the buyer developer agreement. However, as per clause 24 of the agreement dated 28.10.2014, the due date for handing over possession is 31st January, 2019. Hence, by looking into the facts and circumstances of the case, it is evident that due date is yet to come and, in this perspective,, the complaint is pre-mature.



23. With respect to **second issue**, the complainants have failed to furnish any material particulars in order to establish misappropriation of funds on the part of respondent.

24. With respect to **third issue**, as per the buyer developer agreement dated 28.10.2014, the due date of possession of the unit in question is 31st January, 2019. Accordingly, the complaint is premature. Also, the project is registered with the authority and as per registration certificate, the due date of completion of the project is 31.12.2021. further, the counsel for the respondent has submitted that 50% of the construction work at the project is complete. In these circumstances, the authority has no option but to refund the amount paid by them. However, the complainants are eligible for interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants but after forfeiting 10% of the total consideration.

25. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainants requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation.



26. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

27. **Jurisdiction of the authority-** The authority has complete subject matter 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, 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.

28. As per clause 24 of agreement executed inter-se the parties on 28.10.2014, possession was to be handed over to the complainants by July 2018 + 6 months grace period which comes out to be 31.1.2019. Complainants have already paid



an amount of Rs.28,95,180/- to the respondent. However, respondent has failed in fulfilling his obligation as on date. Counsel for the respondent has stated that 50% of construction work at the project is complete. It is a dismal state of affairs w.r.t. work at the project site. In these circumstances, the authority finds no option but to order refund of the amount deposited by the complainants along with prescribed rate of interest i.e. 10.75% per annum after forfeiting 10% of the total consideration. Amount shall be paid by the respondent to the complainants within a period of 90 days from the issuance of this order.

Decision and directions of the authority

29. 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 respondents:

- (i) The respondent is directed to refund to the complainants the sum of Rs.19,59,980/- (Rs.28,95,180/- paid by the complainants - 10% of the total consideration, i.e. Rs.9,35,200/-) along with interest at the prescribed rate of 10.75% per annum on the amount deposited by the



complainants. The interest will be given from date of receipt of payments till 13.12.2018 (date of disposal of complaint) to the complainants within a period of 90 days from the date of this order. Interest component in a tabular form is given below –

Date of payment	Principal amount paid	Interest payable on paid amount @ 10.75% p.a. from date of payment till 13.12.2018
11.10.2014	Rs.5,00,000/-	Rs.2,24,252.86/-
09.10.2014	Rs.23,95,180/-	Rs.10,75,662.75/-
Total amount	Rs28,95,180/-	Rs.12,99,915.61/-

Thus, the total amount to be paid by the respondent is Rs.32,59,895.61/- (Rs.19,59,980/- + Rs.12,99,915.61/-).

30. The complaint is disposed of accordingly.
31. The order is pronounced.
32. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 13.12.2018

Judgement Uploaded on 08.01.2019