

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 06.12.2018
Complaint No.	524/2018 Case titled as Mr. Amit Pal Singh & Anr.V/S M/S Supertech Limited
Complainant	Mr. Amit Pal Singh & Anr
Represented through	Complainant No.1 in person with Shri Sushil Yadav, Advocate for the complainants
Respondent	M/S Supertech Limited
Respondent Represented through	Shri Rishab Gupta, Advocate for the respondent-company.
Last date of hearing	11.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

A Builder Buyer Agreement was signed inter-se Shri Amit Pal Singh-buyer and M/s Supertech Ltd. on 3.7.2014 and as per the clause 25 of BBA, the possession of the flat was to be handed within a period of 42 months + 6 months grace period i.e. 3.7.2018 with six months extended period which comes out to be January 2019. Counsel for the respondent has attached photographs of the project Tower-B, Unit No.404, 4th floor, Sector-68, Gurugram which gives a semblance of completion to the tune of 67% approximately. The due date for completion of project is January 2019. Complaint is **premature** as on date.

Project is registered and the revised date of delivery of possession is 31.12.2021. Keeping in view the facts and circumstances of the matter, if the builder fails to deliver the possession on due date i.e. January 2019 in that case the buyer shall be entitled for delayed possession charges as per the provision of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the delivery of possession. Builder is entitled for due balance amount as per construction linked plan.

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

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint no. : 524 of 2018
First date of hearing : 11.09.2018
Date of decision : 06.12.2018

Mr. Amit Pal Pujji
Mr. Sachin Minocha
H.no. C-1/121 FF, C-1 Block, Janakpuri,
New Delhi-110058

Complainants

Versus

M/s Supertech Ltd.
Address: 1114, 11th floor, Hemkunt Chambers,
89, Nehru Place, New Delhi-110019.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav

Complainant no. 1 in person
with advocate for complainants

Shri Rishab Gupta

Advocate for the respondent

ORDER

1. A complaint dated 10.07.2018 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 Mrs. Mr. Amit Pal Pujji and Mr. Sachin Minocha, against the promoter M/s Supertech Ltd. on account of violation of the clause 25 of



builder buyer agreement executed on 03.11.2015 in respect of flat/unit described as below on account of violation of the provisions of Act ibid.

2. Since, the buyer's agreement has been executed on 03.11.2015 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 project: Group housing project

DTCP licence no.: 106 and 107 of 2013 dated 26.12.2013

RERA registration no. 180 of 2017 dated 04.09.2017

Date of completion as per RERA registration 31.12.2021

1.	Name and location of the project	"Supertech HUES", Village Badshahpur, Sector 68, Gurugram.
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2.	Flat/apartment/unit no.	0404, 4 th floor, tower/block- B.
3.	Unit area	1180 sq. ft.
4.	Registered/ not registered	Registered
5.	Payment plan	Construction linked plan
6.	Date of execution of builder buyer agreement	03.11.2015
7.	Basic sale price	Rs.77,03,040/-
8.	Total consideration amount as per agreement	Rs.89,90,040/-
9.	Total amount paid by the complainants till date	Rs.27,62,512 /- as per statement of complainant
10.	Booking date	14.10.2013
11.	Date of delivery of possession as per clause 24 of BBA i.e. 42 months plus 6 months grace period	03.01.2019
12.	Delay in handing over possession till date	Premature
13.	Penalty clause as per builder buyer agreement	Clause 24 of the BBA 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.



14.	Cause of delay in delivery of possession as stated by the respondent.	Force majeure circumstances which were beyond the control of the respondent
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4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A builder buyer agreement is available on record for the aforesaid apartment according to which the possession of the said unit is to be delivered by 03.01.2019.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.

Facts of the complaint

6. The complainants submitted that the respondent gave advertisement in various leading newspapers and electronic media about their forthcoming project named Supertech Hues at Sector-68 Gurgaon, promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Mr.



Amit Pal Singh Pujji and Mr. Sachin Minocha, booked an apartment/flat admeasuring 1180 sq. ft. in aforesaid project firstly with a construction linked plan for a total cost of flat amounting Rs 87,63,840/- and promise to deliver the flat in April 2017 and subsequently when the complainants shifted to possession linked plan after giving an increased price of Rs.2,26,560/- the respondent without knowledge and consent of the complainants changed his promised date of delivery from April 2017 to July 2018 for total sale consideration of Rs.89,90,040/- which includes BSP, car parking, IFMS, club membership, PLC etc.

7. The complainants submitted that out of the total sale consideration of amount Rs.89,90,040/- the complainants made payment of Rs. Rs. 27,62,512/- to the respondent as it is a possession linked plan. The Complainants made payment of Rs.27,62,512/- to the respondent vide different cheques on different dates, the details of which are as annexed. That as per flat buyer's agreement dated 03.07.2014 the respondent had allotted a unit/flat bearing no. B/0404 on 4th floor in tower-B having super area of 1180 sq. ft. to the complainants. That as



per para no.1 of the flat buyer agreement dated 03.11.2015, the respondent had agreed to deliver the possession of the flat in July 2018 with an extended period of six months.

8. The complainants submitted that they regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainants. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the tower without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. That despite receiving all payment as demanded by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.



9. The complainants submitted that due to this omission on the part of the respondent the complainants has been suffering from disruption on their living arrangement, mental torture,

agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time. That as per clause 2 of the flat buyer agreement dated 03.11.2015 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq. ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at such of nominal rate of Rs.5/- per sq. ft per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the flat even after a delay of almost 14 months from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.5/- per sq. ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.



10. The complainants submitted that the complainants has requested the respondent several times on making telephonic calls and also personally visiting and sent an email on dated 19.06.2018 to the office of the respondent for either to deliver possession of the flat in question or to refund the amount along with interest @ 24% per annum on the amount deposited by the complainants but respondent has flatly refused to do so.

Issues raised by the complainants are as follow:

- i. Whether the respondent /firm is not completing the construction. It could be seen here that the respondent has incorporated the clause is one-sided buyer agreement which is unjustified?
- ii. Whether the flat has not been handed over to the petitioner till today and there is no reasonable justification for the delay?
- iii. Whether the interest cost being demanded by the respondent/developer is very higher i.e.24% which is unjustified and not reasonable?



Relief sought by the complainants

In view of the above, Complainants seeks the following relief:

- i. Direct the respondent to refund the amount of Rs. 2762512/- along with interest @ 24% per annum on compounded rate from the date of booking of the flat in question

Reply by the respondent:

11. The respondent submitted that the complaint filed by complainants is pre-mature, hence it is liable to be dismissed on this ground alone. The proposed possession of the allotment unit was to be handed over in the month of July 2018, however, as per the agreed terms and conditions of the buyer's agreement a further grace period of 6 months was agreed by the parties to the agreement, which comes on January 2019.

12. The respondent submitted that it is pertinent to mention here that the project "Supertech Hues" is registered under the RERA vide registration certificate no. 182 of 017 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.



13. The respondent submitted that the possession clause is also subject to timely payment of all instalments and other dues by the allottees. The complainants have not paid the instalment in time as per payment plans. The complainants are in arrears of instalment. The tower B is almost completed, some part of completion work is yet to be completed. The complainants are in arrear of Rs. 33,03,998/- which is to be paid on completion of superstructure including taxes. The current status of the project is that almost 60-65% of building has been constructed and only development is yet to be completed.
14. The respondent submitted that as per schedule, the complainants have paid Rs. 27,62,512/- out of Rs. 60,81,519/- as to be paid on completion of superstructure.
15. The respondent submitted that it is pertinent to mention here that according to section 19(6) and (7) of the Act, the complainants are liable to pay the instalment within a time as specified in the builder buyer agreement along with interest.

Determination of issues

16. With respect to **first and third issues** raised by the complainants, the terms of the agreement have been drafted



mischievously by the respondent and are completely one sided as also 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.”

17. With respect to the **second issue** raised by the complainants, as per clause 25 of builder buyer agreement, the possession of the flat was to be handed over by 03.01.2019 including 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 by August 2018 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. However, any delay in project execution or its possession caused due to force majeure conditions 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 settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special / beneficial scheme of the company i.e. No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due instalments and additional charges as per the payment plan given in Allotment Letter.”

18. A builder buyer agreement was signed inter-se Shri Amit Pal Singh-buyer and M/s Supertech Ltd. on 03.11.2015 and as per the clause 24 of BBA, the possession of the flat was to be handed within a period of 42 months + 6 months grace period i.e. 3.7.2018 with six months extended period which comes out to be January 2019. Counsel for the respondent has attached photographs of the project tower-B, unit No.404, 4th floor, Sector-68, Gurugram which gives a semblance of completion to the tune of 67% approximately. The due date for completion of project is January 2019. Complaint is premature as on date.



Powers of Authority to issue directions

19. The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings of the authority -

20. The preliminary objections raised by the respondent challenging jurisdiction of the authority stands dismissed. 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.

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

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



23. A builder buyer agreement was signed inter-se Shri Amit Pal Singh-buyer and M/s Supertech Ltd. on 03.07.2014 and as per the clause 25 of BBA, the possession of the flat was to be handed within a period of 42 months + 6 months grace period i.e. 3.7.2018 with six months extended period which comes out to be January 2019. Counsel for the respondent has attached photographs of the project tower-B, unit no.404, 4th floor, Sector-68, Gurugram which gives a semblance of completion to the tune of 67% approximately. The due date for completion of project is January 2019. Complaint is premature as on date.
24. Project is registered and the revised date of delivery of possession is 31.12.2021. Keeping in view the facts and circumstances of the matter, if the builder fails to deliver the possession on due date i.e. January 2019 in that case the buyer shall be entitled for delayed possession charges as per the provision of Section 18 (1) of the Real Estate (Regulation And Development) Act, 2016 till the delivery of possession. Builder is entitled for due balance amount as per construction linked plan.



Decision and directions of the authority

25. 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 issue the following direction to the respondent in the interest of justice and fair play

- i. If the builder fails to deliver the possession on due date i.e. January 2019 in that case the buyer shall be entitled for delayed possession charges as per the provision of Section 18 (1) of the Real Estate (Regulation And Development) Act, 2016 till the delivery of possession. Builder is entitled for due balance amount as per construction linked plan.

26. The order is pronounced.

27. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.12.2018



HARERA
GURUGRAM



Judgement Uploaded on 08.01.2019