

PROCEEDINGS OF THE DAY

Day and Date	Friday and 07.12.2018
Complaint No.	536/2018 Case titled as Mr. Pankaj Gupta V/S M/S Supertech Limited
Complainant	Mr. Pankaj Gupta
Represented through	Shri Divanshu Kakkar, Advocate for the complainant.
Respondent	M/S Supertech Limited
Respondent Represented through	Shri Rishabh Gupta, Advocate for the respondent.
Last date of hearing	13.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Arguments heard.

As per Builder Buyer Agreement dated 7.5.2015 the unit No. 704 Block-M, 7th floor, in project 'Supertech Hues' situated in Sector-68 Gurugram was to be handed over to the complainant within a period of 36 months + 6 months grace period which comes out to be January 2019.

Builder and buyer and HDFC Bank have entered into Tripartite Agreement under subvention scheme. As per terms and conditions of Tripartite Agreement and MOU, the pre-EMIs of the loan amount raised by the builder on behalf of buyer, was to be paid by the builder himself. Buyer had paid only Rs.25 Lakhs from his own funds. Project is registered with the

authority and the revised date of handing the offer of possession is December 2021. No refund is allowed. Since project stands delayed, as such buyer is entitled to receive late delivery charges at prescribed rate of interest i.e. 10.75% per annum till the offer of possession for the amount which he has already paid. Builder shall keep on paying the EMIs till the offer of possession.

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. : 536 of 2018
First date of hearing : 13.09.2018
Date of Decision : 07.12.2018

Sh. Pankaj Gupta
R/o 94C, C3A Block, MIG Flat,
Janakpuri, New Delhi.

Complainant.

Versus

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

2. M/s. Supertech Ltd. Through A.R. Amit
Solanki.
Address: Supertech House, B-28-29, Sector 58,
Noida, U.P. - 201307.

3. M/s. Supertech Ltd. Through A.R. Ms.
Sangeeta Mishra.
Address: Supertech Project Office, Supertech
Hues, Sector 68, Gurgaon, Haryana.

Respondents.

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Divyanshu Kakkar
Shri Rishabh Gupta

Advocate for the complainant.
Advocate for the respondent.

ORDER

1. A complaint dated 16.07.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Pankaj



Gupta, against the respondent M/s Supertech Ltd. on account of violation of the clause 1 of possession of the unit clause of builder developer agreement dated 15.05.2014 and also violation of the terms of MoU dated 20.06.2015 in respect of flat/unit no. K0704 admeasuring 1375 sq. ft. in the project supertech hues at sector 68, Gurugram for not handing over possession on the due date i.e. February 2018 which is an obligation under section 11(4)(a) of the Act ibid.

2. Since, the builder developer agreement was executed prior to the commencement of the Haryana Real Estate (Regulation and Development) Act, 2016, therefore the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as application under section 34 (f) for non-compliance of obligation on the part of the promoter/ respondent herein.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Supertech HUES", Village Badshahpur, Sector 68, Gurugram.
2.	Flat/unit no.	M704, 7 th floor, tower M (shifted from K704)
3.	RERA Registered/ unregistered	Registered vide no. 182 of 2017
4.	Date of completion as per RERA registration certificate.	31.12.2021
5.	Date of booking	06.02.2014
6.	Date of execution of builder developer agreement	07.05.2015



7.	Payment Plan	Subvention payment plan
8.	Total consideration amount as per the agreement	Rs.1,16,68,280/-
9.	Total amount paid by the complainants till date as per SOA	Rs.1,09,30,147.33/-
10.	Due date of delivery of possession as per possession clause 1 of BBA i.e. July,2018 + 6 months' grace period	January, 2019
11.	Delay in handing over possession till date	No delay, complaint is premature.
12.	Penalty clause as per builder developer agreement dated 07.05.2015	Clause 2 of the possession clause of 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.

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 developer agreement is available on record for the aforesaid flat/unit no. K0704 according to which the possession of the said unit is to be delivered by February,2018. The respondent has not delivered the possession of the said unit as on date to the purchaser.

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 07.12.2018. The case came up for hearing on 13.09.2018 and 07.12.2018.



The reply has been filed by the respondent on 24.09.2018 which has been perused.

Facts of the complaint:-

6. Briefly put facts relevant for the disposal of the present complaint are that on 13.01.2014, complainant booked a unit no. R 0404 comprising of 3 BHK and 3 TOI, admeasuring 1880 sq.ft. for a total amount of Rs. 1,53,64,480/-. Thereafter on the request of the complainant vide application form dated 04.04.2014, the allotted unit of the complainant was shifted to unit no. K 704 comprising of 2 BHK + 2T + kids with the total consideration of Rs. 1,13,77,000/-.
7. The complainant has stated that after receipt of 15% of the consideration, the respondent has executed a builder developer agreement on 15.05.2014 for the allotted unit in favour of complainant. As per the terms of the agreement dated 15.05.2015, possession of the unit was to be delivered by August, 2016 plus 6 months' grace period thereof i.e. by February, 2017.
8. The complainant alleged that on visiting the site, it came to his notice that tower K in which his flat was allotted does not comprises of 2BHK + 2T + kids units. The complainant has



alleged that unit allotted to him was changed to M-704 without intimation and the same was accepted by the complainant for avoiding any kind of ambiguity.

9. The complainant has stated that for making payment of sales consideration, he has opted for the subvention scheme which involves the builder to pay the loan credit extended to the applicant on its own expenses till the same is physically handed over to the applicant. In this regard complainant has entered into a memorandum of understanding dated 20.06.2015. In addition to ensure compliance of the subvention scheme another tripartite agreement was also entered into between the complainant, builder and the bank for the sanctioned loan amount of Rs. 85,32,750/-. As per clause 3 of the tripartite agreement, the builder assumes the liability of repayment of loan by way of EMI till February, 2017(which is the subvention scheme period later extended till February, 2018)

10. It was alleged by the complainant that the respondent has failed to deliver the possession of the booked unit by February, 2017 as promised despite repeated reminders from the complainant. In addition to it, the respondent has



stopped making payment of EMIs under subvention scheme and the bank vide email demanded a sum of Rs. 81,779/- for the month of March, 2018.

11. The complainant alleged that the respondent has also failed to fulfil its obligation as per MoU dated 20.06.2015, wherein the period of possession was agreed to be within 36 months' of the signing of MoU and till date the respondent has failed to provide any offer of possession of the subjected unit. Due to failure of the respondent in fulfilling its obligation, the complainant had to pay the EMI for the month of June, 2018.
12. Being aggrieved by the aforesaid acts of the respondent, the complainant was constrained to file the present complaint.

Issues to be decided:-

- i. **Whether the respondent stopping the payment of EMI under subvention scheme, thereby violating the terms of the MoU dated 20.06.2015 is justified?**
- ii. **Whether the delay in providing the possession of the flat/unit is justified?**
- iii. **Whether the complainant is entitled to get refund of the investment on account of violation of terms of the agreement alongwith interest as prescribed?**



iv. Whether the complainant is entitled to payment of EMI for the month of June,2018 and for the subsequent months till the possession or refund of investment or not?

Reliefs sought:-

- i. Direct the respondent to pay Rs. 23,46,712/- alongwith interest as may be prescribed till the actual realization of amount to the complainant.
- ii. Direct the respondent to repay the loan amount of Rs. 85,32,750/- alongwith loan closing charges to be paid to HDFC bank as per the terms of tripartite agreement.
- iii. Direct the respondent to reimburse the amount of Rs. 1,67,826/- paid as EMI in the month of June, 2018, as per the terms of the MoU.
- iv. Excess amount of Rs. 17,324/- which was deposited by the complainant as shown in the statement of accounts as against the complainant's customer ID.



Respondents' Reply:-

13. The respondents have raised certain preliminary objections. Firstly, the complainant has not come with clean hands and

concealed the material fact that the builder developer agreement dated 07.05.2015 executed between the parties for final allotment in tower M, unit no. 704, measuring 1430 sq. ft. Secondly, that the instant complaint is premature as the possession of the unit M704 as per agreement dated 07.05.2015 was to be delivered by July,2018 with further grace period of 6 months' which comes to January, 2019. Hence, the complaint is liable to be dismissed on this ground alone.

14. The respondents submitted that the project 'supertech hues' is registered under the Haryana real estate regulatory authority vide registration no. 182 of 201 dated 04.09.2017 and as per the validity of the said registration certificate the respondents have undertaken to complete the project on or before 31.12.2021.

15. The respondents have submitted that the possession of the subject unit was to be delivered by July,2018 , however, the completion of the building has been 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 respondents



and if non- delivery of possession is a result of any act beyond control of the respondents, the respondents shall be entitled to a reasonable extension of time for delivery of possession of the said premises as per the terms of agreement.

16. The respondents have further submitted that tower M is almost completed which is evident from the photographs annexed and the respondents have also undertaken to complete the project by the year 2021.
17. The respondents have contended that the complainant cannot claim reliefs beyond the terms of builder buyer agreement dated 07.05.2015.

Determination of issues:-

18. With respect to the **first issue** raised by the complainant. As per the terms of MoU dated 20.06.2015, the respondent/ builder has undertaken to repay EMI to HDFC bank till 36 months and if due to any reason, the possession of the unit gets delayed, then the developer has undertaken to pay the EMI to the buyer evenafter 36 months' which shall continue till offer of possession with regard to the booked unit. However, the respondent has stopped making payment of EMIs from March,2018 and EMI of March-April, 2018



amounting 23,46,712/- was paid by the complainant from his pocket which clear cut shows that the respondents have failed to fulfill its contractual obligation as per memorandum of understanding dated 20.06.2015 which is not justified in the eyes of law.

19. As regards **issue no. 2** raised by the complainant, from the perusal of record, the authority came across that as per the terms of builder developer agreement dated 07.05.2015 for subject unit no. M 704 the possession of the flat/unit was to be delivered by the respondent by July, 2018 with further grace period of 6 months'. So, the due date of delivery of possession is January, 2019 which is yet to come and the complaint is premature on this count alone as no cause of action accrues against the respondents. Thus, the interest for the delayed possession as per section 18(1) of the Act has not accrued. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area of the subject flat/unit as per the terms of builder developer agreement dated 07.05.2015 is held to be very nominal and unjust. 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.”

20. As regards **issue no. 3 and 4** raised by the complainant, the authority has given their findings which is stated below under the succeeding paragraphs of the order.

Findings of the authority: -

21. 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.



22. The arguments of both the parties have been heard and documents on record have been perused by the authority. As per builder developer agreement dated 7.5.2015 the unit no. 704 block-M, 7th floor, in project 'supertech hues' situated at sector-68 Gurugram was to be handed over to the complainant by July,2018 + 6 months grace period which comes out to be January 2019. Thus, the complaint is premature as no cause of action accrues against the respondents till date.

Decision and directions of the authority :-

23. During the course of arguments, authority came across that the complainant, respondent and HDFC bank have entered into tripartite agreement under subvention scheme. As per terms and conditions of tripartite agreement and MoU dated 20.06.2015, the pre-EMIs of the loan amount raised by the builder/respondent on behalf of buyer/complainant, was to be paid by the builder themselves. Complainant /buyer had paid only Rs.25 Lakhs from his own funds.

24. Project is registered with the authority and the revised date of handing the offer of possession is December 2021. No refund is allowed. Since project stands delayed, as such buyer



is entitled to receive late delivery charges at prescribed rate of interest i.e. 10.75% per annum till the offer of possession for the amount which he has already paid. Builder shall keep on paying the EMIs till the offer of possession.

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

34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 which is reproduced below:

37. Powers of Authority to issue directions

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.

26. 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 duty bound to hand over the possession of the said unit by January, 2019 as per agreement dated 07.05.2015.
- (ii) The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.45% p.a. till the handing over of the possession to the complainant in case the respondent fails to give possession by the due date i.e. January, 2019.
- (iii) The respondent is further directed to make payment of the loan EMIs as per the terms of memorandum of understanding and tripartite agreement dated 20.06.2015 to the HDFC bank, till the offer of possession.



27. The order is pronounced.

28. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -.....



HARERA
GURUGRAM



Judgement Uploaded on 08.01.2019