

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 16.01.2019
Complaint No.	728/2018 Case titled as Maj Kunal Sharma V/S Supertech Limited
Complainant	Maj Kunal Sharma
Represented through	Shri Srikaanth S.Iyyer, Advocate for the complainant.
Respondent	M/S Supertech Limited
Respondent Represented through	Shri Rishabh Gupta Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Shri Rishab Gupta Advocate has appeared on behalf of the respondent and filed power of attorney and resolution passed by the Board of Directors.

Arguments heard.

The complainant had deposited an amount of Rs.3,50,000/- on 22.5.2016 with the respondent for unit No.T2A3/B11S, 4th floor in project

"Supertech Defence Floors", Sector 79, Gurugram admeasuring 1160 sq. ft. on 22.5.2016. It has been apprised by the complainant that no construction has been done at the site. He wants the refund of his amount alongwith prescribed rate of interest under the provisions of Section 12 of the Real Estate (Regulation and Development) Act, 2016. He is a defence personnel. In view of the prevailing circumstances, the complainant is entitled for refund of his amount alongwith prescribed rate of interest 10.75% per annum from the date of payment till the actual date of refund. The real estate agent-Investors Clinic is also directed to refund the amount alongwith prescribed rate of interest i.e. 10.75% per annum on account of misleading the innocent buyer as brokerage charges.

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

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
16.01.2019

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

Complaint No. : 728 of 2018
First date of hearing: 16.01.2019
Date of Decision : 16.01.2019

1.Maj. Kunal Sharma,
2. Mrs. Ankita Moudgil
R/o 66/81, urban village,
Delhi cantonment, Delhi

Complainants

Versus

1.M/s Supertech Ltd,(Through its managing
director)
Office: 1114, Hemkunt chamber 89,
Nehru Place, New Delhi
2. Investor Clinic Infratech Pvt. Ltd. (Through
its director)
Office: 7, RBI colony market, Hauz Khas,
New Delhi

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Srikaanth S.Iyer Advocate for the complainant
Shri Rishabh Gupta Advocate for the respondent

ORDER

1. A complaint dated 28.08.2018 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 Maj. Kunal



Sharma and Mrs. Ankita Moudgil, against the promoter, M/s Supertech. Ltd. and Investors Clinic Infratech Pvt. Ltd.

2. Since, the application form has been executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 promoters/respondents in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	Supertech Defence Floors, sector 79, Gurugram
2.	DTCP license no.	137 of 2014 (as alleged by complainants)
3.	Apartment/unit No.	T2A3/B11S, 4 th floor (as alleged by complainants)
4.	Flat measuring	1160 sq. ft.
5.	RERA registered/ not registered.	Not registered
6.	Booking date	22.05.2016
7.	Date of execution of apartment buyer's agreement	Not executed
8.	Payment plan	Construction linked payment plan
9.	Basic sale price	Rs.58,60,000/-
10.	Total amount paid by the complainant till date	Rs.3,50,000/-
11.	Date of delivery of possession	Cannot be ascertained



4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement has not been executed.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 16.01.2019. The case came up for hearing on 16.01.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainants submitted that upon the representations of the respondent no.1, an application on 22.05.2016 for the allotment of a unit under the construction linked plan through respondent no.2, the real estate agent. the complainant no.1 was designated as applicant no. 1105879 and the complainant no.2 was designated as applicant no. 1105880 Under the said plan the applicant was provisionally allotted T2A3/ B11D on 4th floor having super area of approximately 1160 sq. ft. charged @ Rs. 4675/- per sq. ft. exclusive of EDC/IDC/PLC and other govt charges of super



area amounting to total sale consideration of Rs. 58,60,000/- inclusive BSP, car parking and IFMS.

7. The complainants paid the consideration of Rs. 3,50,000/- in toto towards booking of a unit, as mentioned in the brochure, vide cheque no. 802667 dated 22.05.2016 and cheque no. 802669 dated 27.05.2016, regarding which an acknowledgment dated 27.05.2016 was handed to the complainants via post. The complainant no.1 and complainant no.2 are joint applicants and are an allottee in terms of section 2 (d) of the Real Estate (Development and Regulation) Act 2016.
8. The complainant submitted that upon the payment of the booking amount they did not receive any document regarding booking or allotment of the unit. The cheques issued by the applicant complainant no.1 in favour of the respondent no.1 were cleared and debited from his account on 31.05.2016.
9. The complainants submitted that, however, consequent to paying the booking amount, neither the respondent no.1 nor the respondent no.2 ever communicated or updated the



complainants regarding the progress of construction or any information regarding the unit. The complainants did not receive any document pertaining to booking of the unit in the said project, the only document was issued is the builder document made available by the respondent no.2 upon continuous and persistent requests by the complainant no.1, which mentions the unit.

10. Thereafter, complainants by lack of response from either respondent, the complainant no.1 submitted a written representation to the CREDAI on 08.12.2016 and CREDAI confirmed that the complaint filed by the complainant no.1 has been successfully registered via email dated 13.12.2016 .
11. The complainants submitted that in the month of February 2017, the complainant no.1 visited the Gurgaon sales office of the respondent no.1 to enquire the status of his grievance redressal and ask for refund of his money. The complainant no.1 met Mr. Hiteshwar Hooda, who was an AGM at the Gurgaon office of respondent no. 1 and Mr. Amit Solanki, representative of respondent no.1. However, to his utter disbelief, the officials at the Gurgaon office asked him to opt



in another project by the respondent no.1 called “Officers Enclave” located at Sohna Road, Sohna, citing the reason that they are not willing to refund the amount but instead the complainants can opt for another project which is being developed for defence personnel’s and government officials since the construction of the Defence Floors project will be delayed and that the construction of Officers’ Enclave is in progress.

12. The complainants submitted that on 29.04.2017 the complainant no.1 wrote an email to CREDAI again, asking for the status of his complaint that was registered on 13.12.2016, since there had been no communication from either CREDAI or the respondent no.1.
13. The complainants no.1 forwarded the required documents to Ms. Nidhi Gera on 16.06.2017, 17.06.2017 and 21.06.2017, as the respondent no.1 were not able to locate the details of the complainants booking. The complainant no.1 again requested that the booking amount be refunded as the respondent no.1 was not able to locate the details relating to the booking amount paid.



14. The complainants submitted that the representative of the respondent no.1 informed the complainant no.1 that the booking amount paid by him is in a “**suspense account**” and that the respondent no.1 cannot refund the amount and there was no mention about any suspense account at any stage, by either the respondent no.1 or the respondent no.2; and that after a year has passed by, the construction has not progressed in any way and now the respondent no.1 is unwilling to refund the booking amount.
15. The complainants submitted that on 16.10.2017, a representative of the respondent no.2, namely Mr. Adiraj, visited the complainant no.1 office, with the intent to persuade the complainants to opt for a unit in another project being developed by the respondent no.1. But complainants demands the refund of their booking amount.
16. The complainants submitted that on 03.11.2017, a representative of the respondent no.2 informed the complainant no.1, via telephonic conversation, that the 4th floor in the project has not been approved, which was another appalling development that the complainants , and



that the current project namely “Supertech Defence Floors” might be scrapped and that the complainant no.1 should opt for another unit in another project by paying the current value of the other unit located elsewhere, or that they are willing to offer any other available floor in the same project at current relevant price.

17. The complainants submitted that the representative of the respondent no.2 asked the complainant no.1 to contact the respondent no.1 regarding any status of the project. The complainants have been trying for a year and a half to know the status of the project from the respondents but have never received any information.
18. The complainants submitted that they insisted that they do not want to opt for another unit in any other project being developed by the respondent no.1 anywhere. Despite the repeated requests to cancel the booking and demand for refund, the respondent no.1 did not pay any attention or even hear the complainants’ grievance.
19. It is submitted that the complainant no.1 tried again to contact the representatives of the respondent no.1 in order



to get his refund. It had been over 18 months since the complainants paid the booking amount in favour of the respondent no.1 through respondent no.2, yet there was no sign of any progress at the construction site.

20. It is further submitted that on 20.04.2018, the respondent no.2 sent a scanned copy of the receipt dated 22.05.2016 for service charge, which was never given to the complainants previously. It is submitted to note that the complainant never paid through cheque, yet the receipt mentions that the payment was made vide cheque drawn on a bank where the complainant no.2 did not have an account in HDFC on that day. It may be noted that the complainants never met any official or representative of the respondent no.2 in any connection on 01.04.2016. Therefore, the receipt produced by the respondent no.2 is a counterfeit receipt and is misleading.

21. The complainants submitted that on 14.06.2018 upon receiving the legal notice, the respondent no.1 communicated that they are willing to refund. However, they did not



mention the quantum of amount that they were willing to refund.

22. The complainants submitted that on 22.06.2018, the respondent no.1 revealed that they are willing to refund the principal amount only, and have sent a scanned copy of 4 cheques, of which 3 are post-dated. This clearly demonstrates an admission of liability on the part of the respondent no.1. However, the respondent no.1 is yet to deliver any amount to the complainants till date. The respondent no.1 has stopped communicating or responding to the representative of the complainants.

23. The complainants submitted that, after repeated reminders to the respondents, and putting forth the complainant's intention and willingness to settle this dispute outside court, the respondents have been adamant not to respond any further with the complainants or their representative.

24. The complainants submitted that there has been no progress of work at the project site in the past 2 years, and that there have been no updates on the progress of work. In fact, the respondent no.1 and respondent no.2 have conveyed to the



complainants that the project would get cancelled and scrapped and that he should opt for another unit in a different project being developed by the respondent no.1. Evidently, the website of the respondent no.1 does not display the project named “Supertech Defence Floors” anywhere under the list of projects. The complainants have been cheated by the respondents as it never intended to initiate the project. The complainants opted for this particular unit for a specific reason, but as it turned out, due to the harassment meted out by the respondents, the entire family of the complainants have had to suffer.

Issues to be decided:

- i. Whether the respondents have violated the provisions of the Real Estate (Regulation and Development) Act, 2016?
- ii. Whether the respondent no.1 has unlawfully retained, and refused to refund, the booking amount paid by the complainants towards the unit in the project, despite no construction at the site of the project has commenced?



- iii. Whether the respondents are liable to pay compensation, along with the interest till date on the booking consideration, to the complainants?

Relief sought:

In view of the facts mentioned in paragraph 4 above, the complainants prays for the following relief(s):

- i. The respondent no.1 is liable to refund the entire booking amount of **Rs. 3,50,000/-**, along with interest at the rates fixed from June 2016 onwards till date and in future till the refund of the entire booking amount along with interest is offered to the complainants.

Respondent's reply

Reply not filed by respondent no. 1

Respondent no. 2

25. The respondent submitted that at the outset, the instant complaint pertains to and is covered by builder buyer agreement cum allotment letter executed between the respondent no. 1 and the complainants who booked the apartment in the project being developed by the respondent no. 1. It is again submitted that the respondent no. 2 is not a party to the said agreement.



26. The respondent submitted that respondent no. 2 is a real estate advisor/service provider and not a party to the agreement executed between the complainants and the respondent no. 1
27. The respondent submitted that the above said agreement executed between the respondent no. 1 and the complainants was on principal – to – principal bases and the respondent no. 2 had no role, liability or obligation under the said agreement.
28. The respondent submitted that respondent no. 2 in the instant case is a mis – joinder of a parties.
29. The respondent submitted that the principal and agent relationship are existed between the respondent no. 2 and respondent no. 1, Hence principal is responsible for all the acts of the respondent no - 2.
30. That in view of the above preliminary objections, the present complaint filed by the complainants are liable to be rejected vis – a- vis the respondent no. 2. It is also submitted that the name of the answering respondent should be dispose/struck off from the instant complaint.



Issues decided

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

31. In respect to the **first** and **second issue** raised by the complainants the authority decides that as buyer's agreement has not been executed between the parties, there is no concluded contract between the parties. The complainant paid an amount of Rs. 3,50,000/- towards the booking of the said unit in the project "supertech defence floor". Since, the respondent is unable to start the project and has retain the money paid by the complainant for so many years in lieu of the said unit, hence the respondents are liable to refund the amount paid by the complainant along with the interest of 10.75%.
32. In respect to **third issue** raised by the complainants, right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer.



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

Inferences drawn by the authority

1. **Jurisdiction of the authority-** The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

35. 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.

36. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has observed that since the project is not registered, therefore notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

37. The complainant had deposited an amount of Rs.3,50,000/- on 22.05.2016 with the respondent for unit no. T2A3/B11S, 4th floor in project "Supertech Defence Floors", Sector 79, Gurugram admeasuring 1160 sq. ft. on 22.5.2016. It has been apprised by the complainant that no construction has been done at the site. He wants the refund of his amount along with prescribed rate of interest under the provisions of Section 12 of the Real Estate (Regulation and Development) Act, 2016.

Decision and directions of the authority

38. 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 refund of the amount along with prescribed rate of interest 10.75% per annum from the date of payment till the actual date of refund. The real estate agent-Investors Clinic is also directed to refund the amount along with prescribed rate of interest i.e. 10.75% per annum on account of misleading the innocent buyer as brokerage charges.
- ii. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

39. The order is pronounced.

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



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 16.01.2019

Judgement Uploaded on 25.01.2019