

**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 21.01.2019
Complaint No.	724/2018 Case Titled As Pushpa Kumari V/S Supertech Limited
Complainant	Pushpa Kumari
Represented through	Govind Narain Gautam in person on behalf of the complainant.
Respondent	Supertech Limited
Respondent Represented through	Shri Rishabh Gupta Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority. (refund)**

Shri Rishabh Gupta Advocate has appeared on behalf of the respondent and filed power of attorney.

Arguments heard.

Complaint was filed on 16.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 29.8.2018, 17.9.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.9.2018 and 29.11.2018 for non-filing of reply even after service of notices.

A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Complainant has booked a unit No. 35, 3<sup>rd</sup> floor, in project "Supertech Officer's enclave" in Hill Town, opposite K.R. Mangalam University, Sector-2, Sohna Road, Gurugram and as per registration certificate the due date of possession is 30.6.2021. The complainant has paid Rs.4,50,000/- to the respondent against a total sale consideration of Rs.48,34,953/-. It was a construction linked plan.

Averments made on behalf of respondent-company Shri Rishab Gupta, Advocate has stated that the company is ready to refund the amount alongwith prescribed rate of interest to the complainant within 90 days from the issuance of this order. The statement of respondent's counsel has been taken on record. As such, the respondent is directed to refund the deposited amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

The complainant has also raised the issue w.r.t. payment of brokerage to M/s Investor Clinic that too be refunded by the investor clinic with prescribed rate of interest within 90 days. As such M/s Investor Clinic is also directed to refund the brokerage amount charged from the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days.

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

Samir Kumar  
(Member)  
21.1.2019

Subhash Chander Kush  
(Member)

**BEFORE THE HARYANA REAL ESTATE REGULATORY**

**AUTHORITY, GURUGRAM**

**Complaint no. : 724 of 2018**

**First date of hearing : 21.01.2018**

**Date of decision : 21.01.2019**

Ms. Pushpa Kumari  
H.no. 824/6, Roshanpura,  
Near Hanuman Murti,  
Gurugram, Haryana-122001

**Complainant**

Versus

1.The Managing Director  
M/s Supertech Ltd.  
Office: Urban-5, Sector-68,  
Gurugram-122001, Haryana  
2.Mr. Gaurav Kapoor  
Vice-President, marketing and Sales,  
Investor Clinic  
Office: 802-805A, 8<sup>th</sup> floor, IRIS tech park,  
Sohna Road, Gurugram-122001, Haryana

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Govind Narain Gautam  
Shri Rishabh Gupta

Advocate for the complainant  
Advocate for the respondents

**ORDER**

1. A complaint dated 16.08.2018 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 Ms. Pushpa Kumari against the promoters the managing director (M/s Supertech Ltd.) and Mr. Gaurav Kapoor in respect of apartment/unit described below in the project 'Supertech Officer's Enclave' on account of violation of the section 11(4)(a) of the Act *ibid.*

2. The complaint was filed on 16.08.2018. Notices w. r. t. hearing of the case were issued to the respondent on 29.08.2018, 17.09.2018 and 29.11.2018 for making his appearance. Besides this, a penalty of Rs. 5000/- was imposed on 17.09.2018 and a penalty of Rs. 10,000/- was imposed on 29.11.2018. However, despite due and proper service of notices, the respondents did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondents it appears that they do not want to pursue the matter before the authority by way of making their personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter



on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

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

1.	Name and location of the project	'Supertech Officer's Enclave', Hill Town, opposite K.R. Mangalam University, Sector 2, Sohna Road, Gurugram
2.	Payment plan	Construction linked plan
3.	Nature of project	Residential
4.	RERA registration	Registered vide no. 97 of 2017 dated 24.08.2017 valid upto 30.06.2021
5.	DTCP license no:	Cannot be ascertained
6.	Date of agreement to sell	Not executed
7.	Unit no.	35C, 3 <sup>rd</sup> floor, tower P35 as per application form
8.	Area of unit	1375 sq. ft. as per application form
9.	Total consideration	Rs 48,34,953/- appended as annexure P2
10.	Total amount paid by the complainant	Rs 4,50,000/- as per statement of complainant
11.	due date of Possession	<b>Cannot be ascertained</b>
12.	Delay	<b>Cannot be ascertained</b>
13.	Penalty clause	<b>Cannot be ascertained</b>



4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Thereafter, again notice was send to respondent but despite service of notice the respondents neither appeared nor file their reply to the authority and complaint. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondents.

**FACTS OF THE CASE:**

5. The complainant submitted respondents have been proclaiming in general public through newspaper advertisements, marketing emails, SMS and telemarketing that they had launched an integrated residential township as **'Supertech officer's enclave'**, hill town, opposite K. R. Mangalam University, Sector-2, Sohna Road, Gurugram, Haryana. The said integrated township as claimed is being set up after necessary approvals of all the competent authorities.



It was further claimed that all the necessary approvals, clearances and procedures had been duly obtained and sanctioned as regards the proposed integrated township. The other terms of the scheme, eligibility, registration and mode of allotment, price, mode of payment, handing over the possession and maintenance etc. were prescribed in the brochures.

6. That lured by these open proclamations through publication in the local newspapers and various advertisements the complainant booked a flat in the project, namely '**Supertech Officer's Enclave**' and paid a sum of Rs. 4,50,000/- to the respondent no. 1 (Rs. 1,00,000/- vide cheque of **SBI** bearing no. 284356 dated 28-01-2016 and Rs. 3,50,000/- vide cheque of **Sarva Haryana Gramin Bank** bearing no. 768161 dated 20-02-2016) towards the booking amount plus a sum of Rs.17175/- to the respondent no. 2 as service charge (vide cheque of **State Bank of Patiala** bearing no. 033678).

7. That Mr. Salman, Mr. Saurav Gupta and Mr. Gaurav Kapoor, employees of investors-clinic through whom booking was made, assured that a flat bearing unit no. P-35 on 3<sup>rd</sup> floor,



measuring 1375 sq. ft. has been booked and they also mentioned these details (that is 3<sup>rd</sup> floor and road facing) on the application form in their handwriting.

8. That with some malafide intention and mischievously, in the payment demand letter issued by Supertech Ltd. the unit number of the flat was mentioned as J59/J59C instead of P-35 (which is also mentioned in the application form).
9. That when the complainant asked about the same, she was told that she would be allotted the flats only as booked. When complainant asked for clarification from Mr. Salman on the same issue, he said that there was a change in the site plan as well as in the location of the flats and asked complainant to visit the site. When complainant visited the site Mr. Saurav Yadav attended the complainant on behalf of Mr. Salman but neither he could clarify the confusion of unit no. nor he could tell/show the exact location of the flat. Then again complainant asked Mr. Salman to clarify the confusion of unit no. After asking several times, finally Mr. Salman told the complainant that there are some more changes in the site plan and he would





share the updated site plan to the complainant on his registered e-mail id.

10. That within the meaning of section 14 of the Real Estate (Regulation and Development) Act, 2016, respondents cannot make any alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.
11. That thereafter complainant received an e-mail from Mr. Deepak Gupta on behalf of Mr. Salman from an un-official email-id (that is deepak.gupta109@gmail.com) having a link of the site plan document of 88MB. Complainant downloaded site plan from that link but surprisingly neither unit no. P-35 nor J59 was present in that site plan.
12. That the complainant informed Mr. Salman that unit no. of her flat did not exist anywhere in the site plan shared by Mr. Deepak Gupta. When complainant asked Mr. Salman to tell/show the exact location of his flat, Mr. Salman shared



contact number of Mr. Rajiv Dhall, DGM, Supertech, Gurugram with the son of the complainant Mr. Himanshu Gautam through whatsapp mobile application. When complainant contacted Mr. Rajiv Dhall, he told the complainant that the final site plan was under the process of approval, meaning that all site plans shared by respondent no. 2 were fake and were being used to trap the innocent complainant and this was the reason that these site plans were being shared through unofficial channels.

13. That a payment demand letter dated 05-11-2016 was issued by the respondent no. 1, demanding a sum of Rs. 21,250/- immediately. But surprisingly the due date mentioned in it was 05-10-2016. It looks that the officials of respondent no. 1 have been playing a game to send the letter after 1 month of the due date so that the interest on payment might be taken in an illegal and unlawful manner.

14. That to make a payment of Rs. 3,50,000/- a cheque of the same amount of Sarva Haryana Gramin Bank bearing no. 768161 dated 20.02.2016 was submitted by the complainant to respondent no. 2 at the time of booking (that is on 27-01-



2016) which was debited on 27-04-2016. But on 20-06-2016, in the scanned documents shared by the respondent no. 2, it was noticed that a forged cheque of Bank of Baroda with the fake signature of the complainant was there, but the original cheque of Sarva Haryana Gramin Bank, submitted by the complainant, was missing in those scanned documents.

15. That when the matter was taken up with the respondent no. 2 through an e-mail dated 21-06-2016, Mr. Gaurav Kapoor (vice-president, marketing and sales, investors-clinic) contacted the complainant over phone and admitted that one employee of his company did the fraudulent act of making a forged cheque with fake signature of complainant and assured that no damage would be caused in any form to the complainant. He further assured that no such incident would happen again in future. On 23-06-2016, Mr. Gaurav Kapoor sent the scanned copy of the original cheque submitted by the complainant through his official e-mail id.

16. That when the complainant checked the payment receipt information provided by respondent no.1, she found that the same forged cheque as mentioned above was presented in the



bank by respondent no.1 on 23.02.2016 which was dishonoured by the bank and a penalty of Rs.1000/- has been imposed on the complainant. Thus respondent no. 2 committed a fraud that caused financial damage as well as mental agony to the complainant. This fraudulent act of the respondent no. 2 not only created doubt in the mind of complainant but also shattered the faith in the respondents.

17. That vide letter dated 03-01-2017 through e-mail at 9:16 PM, the complainant made the things clear that she has no faith in the respondents and therefore requested them to do needful to refund the amount paid by her till the date.
18. That finally on 09-01-2017 at 18:45 PM, an e-mail was received and in this e-mail the request of complainant for refunds was flatly denied in an illegal and unlawful manner.
19. That the reply of respondent no. 1 dated 23-05-2017 to the legal notice of the petitioner is nothing but an afterthought and this reply has been sent just as a reply was to be sent. But respondent no. 2 didn't even bother to send a reply to the legal notice.



**ISSUES RAISED BY THE COMPLAINANTS:**

**20. The following issues have been raised by the complainant:**

- i.** Whether the project Supertech Officer's Enclave is registered with Haryana Real Estate Regulatory Authority and developer is authorized to construct and sale flats under this project?
- ii.** Whether the developers/ promoters can arbitrarily change the site plan/ layout plan of the project? Is it not a violation of section 14 of The Real Estate (Regulation and Development) act, 2016?
- iii.** Whether respondents committed unfair practices or fraud by creating a forged cheque with complainant's fake signature and presenting it to the bank on the name of complainant?
- iv.** Whether the respondents/promoters are under legal obligation to refund the booking amount deposited by the complainant/ applicant along with interest on the basis of cheating, fraud and unfair practices played by the respondents/ promoters under section



12 of the Real Estate (Regulation and Development)  
Act, 2016?

**RELIEF SOUGHT BY THE COMPLAINANT:**

**21. In view of the facts mentioned the following reliefs have  
been sought by the complainant:**

1. To direct the respondents to refund the booking amount of the flat bearing unit no. J59/J59B admeasuring 1375 sq. ft. in the project namely 'Supertech Officer's Enclave', hill town, opposite K. R. Mangalam University, Sector-2, Sohna Road, Gurugram, Haryana, immediately;
2. Grant towards cost of litigation, documentation charges, representation and numerous visits;
3. Grant any other relief to which the complainant found entitled under the facts and circumstances of the case in favour of the complainant and against the respondents.



**DETERMINATION OF ISSUES:**

22. After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the issue wise findings are as hereunder:
23. With respect to the **first issue** raised by complainant, the respondents had already got the project registered with the authority vide registration no. 97 of 2017 dated 24.08.2017 valid upto 30.06.2021. Therefore, the said issue raised by the complainant regarding registration becomes superfluous.
24. With respect to the **second issue raised by the complainant**, within the meaning of section 14 of the Real Estate (Regulation and Development) Act, 2016, respondents cannot make any alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building. As per proviso of the section 14 only minor changes are allowed as may be necessary due to architectural and structural reasons.



25. With respect to **third issue** raised by the complainant, when the matter was taken up with the respondent no. 2 through an e-mail dated 21-06-2016, Mr. Gaurav Kapoor (vice-president, marketing and sales, investors-clinic) contacted the complainant over phone and admitted that one employee of his company did the fraudulent act of making a forged cheque with fake signature of complainant. Therefore, authority is of view that respondent no. 2 committed unfair practices or fraud by creating a forged cheque with complainant's fake signature and presenting it to the bank on the name of complainant. And respondent no. 2 committed a fraud that caused financial damage as well as mental agony to the complainant.

26. With respect to **fourth issue** raised by complainant, Shri Rishab Gupta, Advocate for respondent company has stated that the company is ready to refund the amount alongwith prescribed rate of interest to the complainant within 90 days from the issuance of this order. The statement of respondents counsel has been taken on record. As such, the respondents are directed to refund the deposited amount paid by the





complainant alongwith prescribed rate of interest i.e. 10.75% per annum. The complainant has also raised the issue w.r.t. payment of brokerage to M/s Investor Clinic that too be refunded by the investor clinic with prescribed rate of interest within 90 days. As such M/s Investor Clinic is also directed to refund the brokerage amount charged from the complainant alongwith prescribed rate of interest i.e. 10.75% per annum.

**FINDINGS OF THE AUTHORITY:**

27. 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 complainant at a later stage.

28. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and 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.

29. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.

30. 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 of the Act and to fulfil its obligations.

31. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. To prove the communication of date of hearing to respondent, it is sufficient to prove that such information was available with the website and an electronic communication (e-mail) was served on the respondent.



32. Complaint was filed on 16.8.2018. Notices w.r.t. reply to the complaint were issued to the respondents on 29.08.2018, 17.09.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.09.2018 and 29.11.2018 for non-filing of reply even after service of notices. A final notice dated 14.01.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

33. Complainant has booked a unit No. 35, 3rd floor, in project "Supertech Officer's Enclave" in Hill Town, opposite K.R. Mangalam University, Sector-2, Sohna Road, Gurugram and as per registration certificate the due date of possession is 30.06.2021. The complainant has paid Rs.4,50,000/- to the respondents against a total sale consideration of Rs.48,34,953/-. It was a construction linked plan.

34. Averments made on behalf of respondents-company Shri Rishab Gupta, Advocate has stated that the company is ready to refund the amount alongwith prescribed rate of interest to the complainant within 90 days from the issuance of this order. The statement of respondents counsel has been taken



on record. As such, the respondents are directed to refund the deposited amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

35. The complainant has also raised the issue w.r.t. payment of brokerage to M/s Investor Clinic that too be refunded by the investor clinic with prescribed rate of interest within 90 days. As such M/s Investor Clinic is also directed to refund the brokerage amount charged from the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

36. 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 respondents are directed to refund the deposited amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.
  - ii. M/s Investor Clinic is also directed to refund the brokerage amount charged from the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days.
37. Complaint is disposed of accordingly. File be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2018

Judgment Uploaded on 08.02.2019

