

PROCEEDINGS OF THE DAY

Day and Date	Monday and 21.01.2019
Complaint No.	723/2018 Case Titled As Govind Narain Gautam V/S Supertech Limited
Complainant	Govind Narain Gautam
Represented through	Complainant in person.
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 and the revised date of delivery of possession is 30.6.2021.

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.

Brief facts of the matter are as under :-

The complainant has booked a unit No. P-60, "Supertech Officer's Enclave" in Hill View, Sector-2, Sohna Road, Gurugram on 27.1.2016 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.54,53,469/-. 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 raised the issue w.r.t. refund of brokerage paid 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 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. : 723 of 2018
First date of hearing: 21.1.2019
Date of decision : 21.1.2019

Mr. Govind Narain Gautam
R/o: House no. 824/6, Roshanpura,
Near Hanuman Murti, Gurugram-122001

...Complainant

Versus

1. The Managing Director, Supertech Ltd.
Office: Urban-5, Sector-68,
Gurugram-122001
Head office: Supertech House,
B-28-29, Sector-58, Noida-201301
2. Mr. Gaurav Kapoor (VP-sales and Marketing), Investors Clinic
Address: 802-805A, 8th floor, IRIS
Tech Park, Sohna Road,
Gurugram-122001
Head office: Investors Clinic, Tapasya
Corporate Heights, Tower-A, Ground
floor, Sector-126, Noida-201303, U.P

...Respondents



CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Govind Narain Gautam
Shri Rishabh Gupta

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 16.8.2018 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 Mr. Govind Narain Gautam against the promoter, the Managing Director, Supertech Ltd., Mr. Gaurav Kapoor and Investors Clinic 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 16.8.2018. Notices w.r.t. hearing of the case were issued to the respondent on 29.8.2018, 17.9.2018, 29.11.2018 for making his appearance. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his 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. 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 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

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

***Nature of the project:** Residential township

***DTCP license no:** 124 of 2014 dated 23.8.2014

1.	Name and location of the project	“Supertech Officer’s Enclave”, hill view, Sector 2, Sohna Road, Gurugram.
2.	Registered/Unregistered	Registered (97 of 2017)
3.	Revised registration date	30.6.2021
4.	Payment plan	Construction linked plan
5.	Date of booking	27.1.2016



6.	Unit no. (as per application form)	P-36, 2 nd floor, tower 36B
7.	Area of unit	1375 sq. ft'
8.	Total consideration	Rs. 54,73,468.75/- (annexure P/2)
9.	Total amount paid by the complainant	Rs. 4,50,000/- (annexure-P/2)
10.	Due date of possession	Cannot be ascertained
11.	Delay in offering possession till date	Cannot be ascertained
12.	Penalty clause	Cannot be ascertained

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor file their reply to the complaint therefore their right to file reply has been struck off and case is being proceeded ex-parte against the respondent.

FACTS OF THE CASE

6. The respondent had been proclaiming in general public through newspaper advertisements, marketing e-mails, 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.

7. 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. 894409 dated 28-01-2016 and Rs. 3,50,000/- vide cheque of SBI bearing no. 894410 dated 20.2.2016) towards the booking amount plus a sum of Rs.17,175/- to the respondent no. 2 as service charge (vide cheque of SBI bearing no. 284354 dated 28.1.2016).



8. When complainant checked the payment receipt information provided by respondent no. 1, he noticed that an unknown cheque of amount Rs. 3,50,000/- of Syndicate bank dated 7.2.2016 was presented in the bank by the respondent no. 1 against the payment of complainant's flat which was dishonoured by the bank due to signature mismatch and a fine of Rs. 1,000/- was imposed on the complainant by respondent no. 1, while there was no fault on the part of complainant. Acknowledgement receipt issued by respondent no. 1 on 29.1.2016 clearly shows that complainant had never submitted the above mentioned cheque of Syndicate bank. It seems that there was some fault on the part of respondent no.2 as all the cheques were submitted to respondent no. 1 by respondent no. 2.



9. 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-36 on 3rd floor and facing the wide road, measuring 1375 sq. ft' has been booked and they also mentioned these details (that is 3rd

floor and road facing) on the application form in their handwriting.

10. It is submitted that malafidely and mischievously, the unit number of the flat was mentioned as J60/J60B instead of P-36 (which is also mentioned in the application form) in the payment demand letter issued by Supertech Ltd.
11. It is better known to the respondents that how the unit no. has been changed and the flat was booked on 2nd floor without the permission of the complainant.
12. The cost of the flats at 2nd floor is approximately Rs. 2.5 lacs more than that on the 3rd floor. It looks that to get more amount, the respondents did the illegal, unlawful booking at 2nd floor without the permission of the complainant.
13. When the complainant asked about the same, he was told that he would be allotted the flats on the 3rd floor 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.

14. 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.

15. Thereafter complainant received an e-mail from Mr. Deepak Gupta on behalf of Mr. Salman from an unofficial 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 J60 was present in that site plan.

16. The complainant informed Mr. Salman that unit no. of his 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 (co-applicant) 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 (like un-official e-mail ids and WhatsApp).

17. A payment demand letter dated 5.10.2016 was issued by the respondent no. 1, demanding a sum of Rs. 6,13,612/- immediately. But surprisingly the due date mentioned in it was 21.8.2016. It looks that the officials of respondent no. 1



have been playing a game to send the letter after 1.5 months of the due date so that the interest on payment might be taken in an illegal and unlawful manner.

18. Just 2 days after the first payment demand letter, respondent no. 1 issued another payment demand letter dated 7.10.2016 demanding a sum of Rs. 81,881/- immediately. But surprisingly here also the due date mentioned was 23.5.2016, that is this letter was issued after 4.5 months of the due date and in this letter demand at the time of booking was mentioned as Rs. 5,08,750/- against the amount of Rs. 4,50,000/- as mentioned in the previous letter. That means respondent no. 1 changed his demand just within 2 days and as complainant opted for a construction linked plan, it is hard to justify this change in demand just in 2 days. It clearly shows malafide intention of the respondent no. 1.

19. Vide letter dated 3.1.2017 through e-mail at 9:16 PM, the complainant made the things clear that he has no faith in the respondents and therefore requested them to do needful to refund the amount paid by him till the date. Vide letter dated 5.1.2017 through e-mail at 12:23 PM, it was assured by the



respondent no. 2 that a complaint had been registered by them and concerned customer care representative would contact the complainant within 2 working days. On 7.1.2017 at 13:50 PM, again a stereo type e-mail was received, but nothing was done. Finally on 9.1.2017 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. The above facts make it abundantly clear that the respondents mischievously, illegally, unlawfully and fraudulently also retained the amount of the complainant and refused to refund the same. Therefore, the complainant sent a legal notice dated 22.2.2017.

20. Reply of respondent no. 1 dated 23.5.2017 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.

21. No petition on the same cause of action and between the same parties or the parties under whom they claim litigating, has been previously filed. The cause of action arose with the petitioner in the month of January 2017 when the petitioner



made things clear that they had no faith on the respondents and the cause of action is continuing.

22. ISSUES RAISED BY THE COMPLAINANT

- I. Whether the project Supertech Officer's Enclave is registered with Haryana RERA and developer is authorized to construct and sale flats under this project ?
- II. Can the developer/promoter arbitrarily change the site plan/layout plan of the project? Is it not a violation of Section 14 of RERA?
- III. Whether respondents committed unfair practices and fraud by presenting a forged cheque to the bank on the name of the complainant ?
- IV. Whether the respondents/promoters are under legal obligation to refund the booking amount deposited by the complainant/applicant on the basis of cheating, fraud and unfair practices played by the respondents/promoters under section 12 of RERA Act, 2016?



RELIEF SOUGHT

23. In view of the above, complainants seeks the following relief:

- I. To direct the respondents to refund the booking amount of the flat bearing unit no. J60/J60B 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, along with interest, immediately.
- II. Grant towards cost of litigation, documentation charges, representation and numerous visits.
- III. Grant any other relief to which the complainants are found entitled under the facts and circumstances of the case.

DETERMINATION OF ISSUES

24. With respect to the **first issue** raised by complainant, the respondent had already got the project registered with the authority vide registration no. 97 of 2017 dated 24.8.2017 valid upto 30.6.2021. Therefore, the said issue raised by the complainant regarding registration becomes superfluous.

25. 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.

26. 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 21.6.2016, Mr. Gaurav Kapoor (Vice-President, Marketing & 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.

27. With respect to **fourth issue** raised by complainant, the advocate for the respondent has stated that the company is ready to provide refund of the amount deposited by the complainant.

FINDINGS OF THE AUTHORITY

28. 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.

29. 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.

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

31. 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.

32. As the project is registered with the authority and revised committed date of completion of project/delivery of possession is 30.6.2021 as per registration certificate. Therefore, under section 18(1) proviso the respondent is liable to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per



annum on the amount deposited by the complainant with the promoter.

33. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
34. Such notices were issued to the respondent on 29.8.2018, 17.9.2018 and 29.11.2018.
35. As the respondent has 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.



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. 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.
- ii. 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.
- iii. The complainant has booked a unit No. P-60, "Supertech Officer's Enclave" in Hill View, Sector-2, Sohna Road, Gurugram on 27.1.2016 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.54,53,469/-. It was a construction linked plan.

iv. 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.

v. The complainant has raised the issue w.r.t. refund of brokerage paid 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 alongwith prescribed rate of interest i.e.
10.75% per annum within a period of 90 days.

37. Complaint is disposed of accordingly.

38. Detailed order will follow.

39. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.1.2019

Judgement uploaded on 21.02.2019

HARERA
GURUGRAM

