

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 30.01.2019
Complaint No.	925/2018 case titled As Mr. Amit Kumar Vs M/s Supertech Limited
Complainant	Mr. Amit Kumar
Represented through	S.C.Gupta father of complainant with Shri Sanchit Kumar, Advocate.
Respondent	M/s Supertech Limited
Respondent Represented through	Shri Rishabh Gupta, Advocate for the respondent.
Last date of hearing	21.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 24 of the Builder Buyer Agreement dated 19.8.2015 for unit No.B/1104, in project "Supertech HUES" Sector 68, Gurugram, possession was to be handed over to the complainant by July 2018 + 6 months grace period which comes out to be January 2019. Complainant has already paid Rs.31,03,433/- to the respondent against a total sale consideration of Rs.80,54,922/-.

Counsel for the respondent has stated that construction is complete and only internal work remain to be done. However, the counsel for the

respondent has stated that they shall hand over the possession of the unit to the complainant by June 2020.

Father of the complainant wants to get refund of the deposited amount but his request is declined. He is duty bound to pay the remaining dues to the respondent.

Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f January 2019 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession failing which the complainant is entitled to seek refund of the amount. The amount of interest shall be paid to the complainant before 10th of every month.

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

Samir Kumar
(Member)
30.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 925 of 2018
First date of hearing : 21.12.2018
Date of decision : 30.01.2019

1. Mr. Amit Kumar
2. Mrs. Meera Gupta
R/o Flat 2101, San Marino Apartment,
Sector-45, Gurugram, Haryana-122003

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 S.C. Gupta Father of complainants
Shri Sanchit Kumar Advocate of the complainants
Shri Rishabh Gupta Advocate of the respondent

ORDER



1. A complaint dated 13.09.2018 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 Mr. Amit Kumar and Mrs. Meera Gupta, against the promoter M/s Supertech Ltd. (through its authorized representative) on account of violation

of clause 24 of the builder-buyer agreement executed on 19.08.2015 for unit no. 1104, 11th floor, B tower, having 1180 sq. ft. in the project “supertech hues”, located at sector 68, Gurugram for not handing over possession on due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*. It is pertinent to note that the due date of delivery of possession is 31.01.2019 and on this count the complaint is premature.

2. Since the builder buyer agreement dated 19.08.2015 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of promoter/ respondent under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Supertech hues”, Village Badshahpur, Sector 68, Gurugram.
2.	Nature of real estate project	Group housing project
3.	DTCP license no.	106 and 107 of 2013 dated 26.12.2013
4.	Registered/ not registered	Registered
5.	RERA registration no.	182 of 2017 dated 04.09.2017



6.	Date of completion as per HRERA registration certificate.	31.12.2021
7.	Booking date	31.01.2014 (Pg.17 of the complaint)
8.	Payment plan	Possession linked plan
9.	Date of execution of buyer developer agreement	19.08.2015 (Annx C-1)
10.	Flat/apartment/unit no.	B-1104, 11 th floor, tower B
11.	Total consideration amount as per agreement dated 18.07.2014	Rs. 80,54,922/-
12.	Total amount paid by the complainants till date	Rs. 31,03,433/- (Annx C-2)
13.	Percentage of consideration amount	38.52 % Approx.
14.	Date of delivery of possession	Clause 24 of the possession of the unit shall be given by July,2018 with grace period 6 months i.e. January 2019
15.	Delay in handing over possession till date	Pre-mature
16.	Penalty clause as per builder buyer agreement dated 20.06.2014	Clause 24 of the possession of the unit Rs. 5/- per sq. ft. of the super area of the unit per month
17.	Cause of delay in delivery of possession as stated by the respondent.	Force majeure circumstances which were beyond the control of the respondent such as non-availability of steel and/ or cement or other building materials and/ or water supply or electric power and/ or slow down strike etc.



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 dated 19.08.2015 is available on record for the aforesaid apartment according to which the possession of the said unit/flat is to be delivered by January, 2019. However, as per the complainants' version the construction activity is going on at the slow pace and there is no likelihood of delivery of possession within committed period by the respondent i.e. by January, 2019.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 21.12.2018 and 30.01.2019. The reply has been filed on behalf of the respondent which has been perused by the authority.

Facts of the complaint:-

6. Briefly stated, the facts of the case as culled out from the case of complainants are that they were allotted the flat no. 1104 tower B in supertech hues situated at sector 68, Gurugram, Haryana, admeasuring 1180 square ft. vide buyer developer agreement dated 19.08.2015 in the project named 'supertech hues' proposed to be developed at sector 68, Gurugram, Haryana.
7. The complainants submitted that they entered into buyer developer agreement with the respondent on 19.08.2015 for



purchase of the said unit for a basic sale consideration of Rs. 80,54,922/-.

8. The complainants submitted that as per the payment plan annexed with the agreement, all the payments were made on time. Further it is specifically brought to the notice of the hon'ble authority that the complainant has paid over and above the demanded amount by sum of Rs. 5 lakhs Further, submitted that they made payments totalling to Rs. 31,03,433/- vide various receipts which amounts to 38.52% of the basic sale consideration in accordance with the payment plan.
9. The complainants submitted that they took loan of Rs. 65,00,000/- for making payment to the respondent based upon their promise to deliver the flat on time so that the complainants can use the flat as their residence and save the rent. It is submitted that out of the total sanctioned amount the complainants have paid an amount of Rs. 20,25,397/- to the respondent in respect of which the complainants are paying a monthly pre-EMI of Rs. 16,204/- from their own source of income despite the respondent severely delaying the construction as well as delivery of the said flat. The complainants have paid a total sum of Rs 4,39,190/- to the bank as interest.



10. The complainants submitted that they have been living in a rented accommodation for many years and had to pay Rs. 19,000/- as rent every month due to such delay in possession amounting to a total expense of Rs. 6,84,000/- since 01.09.2015 to 01.09.2018.
11. The complainants submitted that as per the clause 24 of the agreement, the possession of the said flat was to be given by 01.07.2018. Further, as per clause 24 of the agreement it was agreed that in case of delay in possession, the respondent shall be liable to pay compensation at the rate of Rs. 5/- per sq. ft. of the super area per month for the period of delay in case delay.

Issues to be decided:-

- a. **Whether the respondent has breached the provisions of the Act as well as the agreement by not completing or delivering the construction of the said flat as per the agreement?**
- b. **Whether the complainants are entitled to refund of entire amount paid to the respondent as part consideration for purchasing the flat?**
- c. **Whether the complainants are entitled to refund of entire amount paid to the bank as interest due to default by the respondent in paying the interest as per the agreement?**



Reliefs sought: -

- a) Pass an order for refund of Rs. 31,03,433/- along with pendent lite and future interest thereon @ 24% from the due date of payment till the date of actual payment, in favour of the complainants and against the respondent, his legal representatives, heirs and assigns being the amount due and payable to the complainants from the respondent on account of amount paid to the respondent.
- b) Pass an order for payment of Rs 4,39,190/- on account of interest paid to the bank by the complainants, in favour of the complainants and against the respondent.
- c) Pass an order for payment of Rs. 6,84,000/- on account of rent paid by the complainants in finding alternate accommodation, in favour of the complainants and against the respondent.
- d) Pass an order for payment of penalty for delay as per the agreement at the rate of Rs 5/ sq. ft. i.e. Rs. 5,900 of the 1180 sq. ft. per month for the period of delay in favour of the complainants and against the respondent.



e) Award Rs. 1,00,000/- as the cost of the complaint in favour of the complainants and against the respondent.

Respondent's reply: -

12. The respondent has raised various preliminary objections and submissions of this hon'ble authority. They are as follow:
13. The respondent submitted that complaint filed by complainants is pre-mature, hence it is liable to be dismissed on this ground alone. As per builder buyer agreement dated 19.8.2015, executed between the parties for allotment of unit no. B-1104, the proposed possession date for the allotted unit was in the month of July 2018, however, as per the agreed terms and conditions of the flat buyer agreement, a further grace period of 6 months was agreed by the parties, which comes will end up in January 2019, and prior to this no cause of action arose in favour of the complainant for filing the instant complaint. It has been held in various authorities by hon'ble apex court that 'If a complaint is a pre-mature, then it can either await maturity or be returned to the complainant for filing latter.'" Thus the compliant is liable to be dismissed on this ground and a separate application to this effect is also attached herewith.
14. The respondent submitted that the project "supertech hues" is registered under the Haryana real estate regulatory authority



vide registration certificate no. 182 of 2017 dated 4.9.2017. The authority had issued the said certificate which is valid for a period commencing from 4.9.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project on or before the year 2021.

15. The respondent submitted that the completion of the building is 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 respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be entitled to a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainants and respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. Further, submitted that due to stagnation, sluggishness, down fall in real estate market, due to demonetisation as well as coming into force of GST, the speed of work/construction of every real estate sector market has been too slump which results in delay of delivery of possession as well as financial loss to the promoters.



16. It is also submitted that the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real sector market but not to spoil the development of project by refunding the amount claimed by the allottees. It is only when the promoter discontinue their business or the construction work/ development of project has been stopped due to some reasons. Thus, the plea/ relief of refund claimed by every allottee is not sustainable in the eye of law rather is a pre-planned to get refund their money to get safe from breach of contract in future for making further instalments, by filing such frivolous complaints.
17. The respondent submitted that the complainants have filed the said compliant after the demand letter of Rs. 23,87,421/- issued by the respondent. The demand letter was issued on 04.06.2018 and to get safe from paying the instalment, the complainants have filed this frivolous complaint.
18. The respondent submitted that the said project is a continuance business of the respondent and it will be completed by the year 2021. The current status of the project is that almost 70-75 % of the building has been constructed i.e. superstructure work has been completed and some internal development is yet to be completed/ developed. The complainants have booked at 11th



floor, in tower B which is almost completed/developed. The photographs of the current status of the project are attached herewith as **annexure R3**. The respondent also undertakes to complete the project by the year 2021 but will give offer of possession to the complainant of their unit by June 2020. Therefore, no refund at this stage cannot be made and if granted, the respondent will suffer irreparable loss and great financial loss which will lead to multiplicity of proceedings.

19. That it is pertinent to mention here that when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted. Therefore, according to terms and conditions of builder buyer agreement Clause 2 herein reproduced below:-

2. *The developer hereby agrees to pay penalty to the buyers @ of Rs.5/- per sq. feet of super area of the allotted unit per month for any delay in handing over possession beyond the given possession date plus grace period of 6 months and upto the offer of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances. 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 buyer till such date, at the time of final account settlement before possession of the unit.*



20. The respondent submitted that plea regarding the loan taken by the complainants needs no reply as the respondent has no knowledge about this concern, hence wrong and denied. It is denied that the respondent promised to deliver the possession. No guarantee or promises were given to the complainants. There is no malafide intention of the respondent to get delay the possession of the said unit. The averments of preliminary Objections may also be read as part of reply to this para of the compliant for the sake of brevity and non- repetition. The respondent as well as their officials are using their all force to complete the project within the time provided by the authority.

Rejoinder of the complainants: -

21. The complainants have filed rejoinder to the reply of respondent denying each and every contention raised by the respondent in the reply to the complaint.

Determination of issues:-

22. With respect to the **issue no. a. and b.** raised by the complainants, as per clause 24 of buyer developer agreement dated 19.08.2015, the possession of the flat was to be handed over by July 2018 plus six months' grace period i.e. by January 2019. The clause regarding the possession of the said unit is reproduced below:



“24. Possession of unit

The possession of the unit shall be given in 42 months i.e. by July 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, to cover any unforeseen circumstances.”

As the cause of action in the present complaint did not arise, the respondent is not liable under section 18 of the Act *ibid* to refund the amount paid by the complainants as the complaint is premature on this count.

23. With respect to the **issue no. c.** raised by the complainants, the said issue pertains to compensation and the same are to be decided by adjudicating officer for which the complainant shall file separate application.

24. The complainant 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 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 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.

Findings of the authority: -

25. The authority has complete jurisdiction to decide the complaint with 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

26. As per clause 24 of the buyer developer agreement dated 19.08.2015 for unit no. B/1104, in project “supertech hues” sector 68, Gurugram, possession was to be handed over to the complainants by July 2018 plus 6 months’ grace period which comes out to be January 2019. Complainants have already paid Rs. 31,03,433/- to the respondent against the total sales consideration of Rs. 80,54,922/-.
27. During the course of arguments, learned counsel for the respondent has stated that construction is complete and only internal work remains to be done and they shall handover possession of the unit to the complainants by June 2020. Father of the complainant wants to get refund of the deposited amount but his request is declined. He is duty bound to pay the remaining due to the respondent.
28. The authority is of the view that complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. January 2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development)



Act,2016 till offer of possession failing which the complainants are entitled to seek refund of the amount.

Decision and directions of the authority:-

29. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- i. The respondent is directed to give the delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 01.02.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act,2016 till offer of possession failing which the complainants are entitled to seek refund of the amount.
- ii. The monthly amount of interest shall be paid to the complainants before 10th of every month.

30. The complaint is disposed of accordingly.

31. The order is pronounced. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram.
Dated: 30.01.2019

Judgement uploaded on 25.02.2019