

**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 21.01.2019
Complaint No.	719/2018 Case Titled As Balwant Singh V/S Supertech Private Limited
Complainant	Balwant Singh
Represented through	Complainant in person with S/Shri Puneet Nahar and Mohan Verma, Advocates.
Respondent	Supertech Private 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 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 Rishabh Gupta Advocate has appeared on behalf of the respondent and filed power of attorney.

Arguments heard.

Complaint was filed on 14.8.2018. 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 :-

As per clause L.26 of the allotment letter dated 22.7.2016 for unit No. 2201, Officers Enclave in Hill Town, Sector-2, Gurugram possession was to be handed over to the complainant by July 2020 + 6 months grace period which comes out to be 31.1.2021. 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. : 719 of 2018**  
**Date of First hearing : 21.09.2019**  
**Date of decision : 21.01.2019**

Mrs. Meena and Mr. Balwant Singh Grewal ,  
R/o. House no. W2-21A, Nangli Janib, B-1,  
Janak Puri, New Delhi-110058

**Complainants**

M/s Supertech Pvt. Ltd.  
Regd. Office: Supertech House, B-28-29,  
Sector-58, Npoida-201307  
M/s Investor's Clinic Infratech Pvt. Ltd.  
Regd Office: 802-805A, 8<sup>th</sup> floor, IRIS Tech  
Park, Sohna Park, Sector-48, Gurugram,  
Haryana

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**EX-PARTE ORDER**

1. A complaint dated 14.08.2018 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 complainants Mrs. Meena and Mr. Balwant Singh Grewal against the promoters M/s Supertech Pvt. Ltd and M/s Investor's Clinic Infratech Pvt.



Ltd, in respect of said unit described below in the project 'Officers Enclave', on account of violation of the section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"Officers Enclave", Sector 2, Gurugram
2.	Unit No.	2201,22nf floor, 2BHK,plotted colony named as hill Town
3.	Unit area admeasuring	985 sq.ft.
4.	RERA registered/ not registered.	<b>Unregistered</b>
5.	Nature of real estate project	<b>Plotted colony</b>
6.	Booking date	08.07.2006
7.	Date of execution of allotment letter	22.07.2016
8.	Payment plan	Construction linked payment plan
9.	Total price	Rs. 34,17,950/-
10.	Total amount paid by the complainant till date	Rs./-
11.	Date of delivery of possession as per clause 26 of allotment letter (July 2020 + 6 months grace period)	31.01.2021
12.	Delay in handing over possession till date	Premature
13.	Penalty clause as per L 26 of the allotment clause	Rs.5/- per sq. ft per month of the area of the said unit



3. The details provided above have been checked on the basis of the record available in the case file. An allotment letter dated 22.07.2016 is placed on record for the aforesaid unit

according to which the possession of the same was to be delivered by 31.01.2021. Thus, the complaint is a premature complaint.

3. 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. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

#### **Facts of the complaint**

4. Briefly stated, the facts of the case the complaint, the complainant submitted that the complainant along with the family members visited the Gurugram office and the project site of the respondent.
5. The agents hired by the builder named as investors clinic gave him a brochure, price list etc. and allured him shady pictures of the project and also the agents assured the complainant that the possession of flat will be delivered within 3-4 years as construction was already started.
6. The complainant paid the amount whichever asked by the builder to the complainant and also willingly paid the



remaining amount, but the respondent failed to deliver the possession of the flat and instead of delivering the possession the respondent asked the complainants to shift to some other project of the same builder.

7. The respondent denied to deliver the possession to the complainant. The complainant is staying in a rented accommodation and pays a rent of Rs. 20,000/-.
8. The complainants also visited several times to the office of the respondent for the speedy construction.
9. **Issues raised by the complainants**

The relevant issues as culled out from the complaint are as follows:

- I. Whether the developer has violated the terms and conditions of flat buyer agreement?
- II. Whether there is any reasonable justification for not starting the construction of the said project?
- III. Whether there has been deliberate or otherwise, misrepresentation on the part of the developer for relocating to any other project of the same builder?



IV. Whether complainants are entitled for compounding interest @18% per annum from the date of booking till date?

**10. Relief sought:**

I. Direct the respondent refund with interest of 18% from 10<sup>th</sup> February 2016 to the date of refund on paid amount by the complainant to the respondent party. .

**Determination of issues**

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

11. With respect to the **first and second issue** raised by the complainants, allotment letter dated 22.07.2016, the possession was stipulated to be handed over by 31.01.2021. thus, there has been no violation by the builder in delivering the possession.
12. The **third issue** raise by the complainants, there is no document attached which authenticate that there has been a misrepresentation on the part of the developer.



13. With respect to the **fourth issue** raised by the complainants, the authority is of the view that refund of brokerage is too be refunded by the investor clinic with prescribed rate of interest within 90 days.

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

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

15. The complainants reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

### **Findings and directions of the authority**

16. **Jurisdiction of the authority-** The project “Officers Enclave” is located in Sector -2, Gurugram, thus 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.

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.

17. 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.
18. Such notices were issued to the respondent on 29.08.2018, 17.09.2018 and on 29.11.2018.
19. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts



available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.

20. The ex-parte final submissions have been perused at length. Details regarding the status of the project have not been supported by relevant documents, as already stated above. The unit buyer agreement has been executed on 22.07.2016, according to which the due date of possession comes out to be 31.01.2021. In view of the facts and circumstances of the case, the authority is of the considered opinion that with respect to the refund of brokerage is to be refunded by the investor clinic with prescribed rate of interest within 90 days.

**Decisions and directions of the authority:**

21. 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:

- (i) The respondent is directed to 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 described to refund the brokerage amount with prescribed rate



of interest i.e. 10.75% per annum within a period of 90 days.

22. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.
23. The complaint is disposed of accordingly.
24. The order is pronounced.
25. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2019

Judgement uploaded on 25.02.2019

