

PROCEEDINGS OF THE DAY	
Day and Date	Wednesday and 27.02.2019
Complaint No.	1003/2018 Case Titled As Sumit Anand V/S Supertech Ltd
Complainant	Sumit Anand
Represented through	Complainant in person
Respondent	Supertech Ltd
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 registered with the authority.

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

It is an admitted fact on the part of respondent – Sueprtech Limited that on account of certain unavoidable circumstances, they have to scrap the project and now they are ready to refund the amount alongwith prescribed rate of interest i.e. 10.75% per annum to the complainant/buyer. The respondents are directed to refund the amount alongwith prescribed rate of interest through RTGS in the account of the complainant within 90 days. Respondent No.2-Investors Clinic Infratech Pvt. Ltd. is also directed to refund

the brokerage amount of Rs.17,175/- to the complainant through RTGS in the account of the complainant within a period of 90 days.

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

Sanfir Kumar
(Member)
27.02.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 1003 of 2018
First date of hearing : 26.02.2018
Date of decision : 27.02.2018

Mr. Vasu Dev Anand and Mr. Sumit Anand
R/o: 766, Saraswati Vihar, Chakarpur,
Gurugram - 122001

Complainants

Versus

1. M/s Supertech Limited
Office: Supertech House, B-28-29,
Sector-58, Noida - 201301
2. Investors Clinic Infratech Pvt Ltd.
Office: 7, RBI Colony Market, Hauz Khas,
New Delhi - 110016

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Sumit Anand
Shri Rishabh Gupta

Complainant in person
Advocate for respondent

ORDER

1. A complaint dated 08.10.2018 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. Vasu Dev Anand and Mr. Sumit Anand against M/s Supertech Limited



and Investors Clinic Infratech Pvt. Ltd., 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 particulars of the complaint case are as under: -

1.	Name and location of the project	"Supertech Officer's Enclave", Sector - 2, Sohna Road, Gurugram, Haryana.
2.	RERA registered/ not registered	Registered (258 of 2017)
3.	Revised registration date as per registration certificate	02.10.2020
4.	Unit no.	704, A4
5.	Unit measuring	985 sq. ft'
6.	Allotment letter executed on	29.7.2016
7.	Total sale consideration	Rs. 38,16,875/- (as per allotment letter on page 34)
8.	Total amount paid by the complainants till date	Rs. 8,14,903/- (as per attached receipts)
9.	Payment plan	Construction linked plan
10.	Date of delivery of possession Clause 26 of allotment letter	July, 2020 + 6 months grace period
11.	Delay in handing over possession till date	Pre-mature
12.	Penalty clause as per allotment letter	Clause 26 - Rs. 5 per sq. ft' of the area of unit per month



3. 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. An allotment letter is available on record for the aforesaid unit. The possession of

the said unit was to be delivered by July, 2020 as per the said agreement.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent has filed the reply.

Facts of the complaint

5. In Jan 2016 promoter and Investors Clinic gave full page advertisement in leading newspapers like Times of India, Hindustan times regarding Supertech Ltd's project Supertech Officer's Enclave (homes for serving/retired government employees) Hill Town, Sector 2, Sohna Road, Gurgaon Haryana-122103. The complainants contacted Supertech Ltd directly but they refuse to entertain for Officer's Enclave project and told to coordinate with Investors Clinic Infratech Pvt Ltd and contact at number given in advertisement.
6. The complainants visited site to check location and adjoining area. and met Investors Clinic executive Mr P K Singh at the site who convinced the complainants that this project has all necessary government approvals and completion time of project is 3 years. He also committed that construction will start by March 2016.



7. The complainants made booking in construction link plan and gave two cheques. First cheque of Rs. 3,50,000 as booking amount for flat no. 704, block A4 in favour of Supertech Limited- Officers Enclave A/C and cheque of Rs. 17,175 in favour of Investors Clinic Infratech Pvt Ltd as service charges. for booking under project "Supertech Officers Enclave".
8. Both the cheques were debited from complainant's account by 25th Jan 2016. The complainants were expecting call/letter from Supertech to complete other formalities and signing builder buyer agreement but there was no response for 6-8 months from either Investors Clinic Infratech Pvt Ltd or Supertech Ltd even after several phone calls and letters.
9. After long follow-up in end of July 2016 builder buyer agreement was signed between Supertech Ltd and Mr. Vasudev Anand and Mr. Sumit Anand. Supertech Ltd issue payment demand letter on 04.08.16 for Rs. 15,750 (service tax on booking amount Rs. 3,50,000) and same was paid by PNB cheque No 877832 dated 12.08.2016 payment receipt acknowledged by Supertech Via receipt no 5013511
10. Supertech Ltd issued payment demand letter on 23.08.2016 for Rs. 4,31,976.88 (2nd instalment within 60 days of booking) and same was paid by PNB cheque No 877833



dated 05.09.2016 payment receipt acknowledged by Supertech via receipt no 5015278

11. The complainants visited construction site Supertech Officer's Enclave, High Rise in Hill Town, Sector 2, Sohna Road, Gurgaon Haryana-122103 in December, 2016 to check progress of work but no work was started. The complainants called Supertech and they responded that delay was due to some government approval.
12. In March, 2018 the complainants came to know from different sources that the project is scrapped and will not be constructed due to pending approvals/ no approvals from authorities (not even registered in HRERA). The complainants then wrote a letter to Supertech to refund their money but there was no response from Supertech Ltd.
13. After lot of follow-up by phone/personal visits/ letters it was concluded that Supertech Ltd was not willing to refund the money and later the complainants started getting calls from various representatives of Supertech to shift to another project of Supertech.
14. Other Supertech Ltd projects are costly and location also doesn't suit complainant's requirement that is why



complainants were requesting Supertech Ltd to refund their money given against construction of above said flat.

15. Similar petition against Supertech Ltd for refund of amount deposited for construction of Supertech Officer's Enclave was filed in HARERA details of which are given below. In both complaints decision was given in favour of complainant.
16. HARERA Case No 85 between Sanjay Yadav V/S Supertech Ltd and Investors Clinic Infratech Pvt Ltd
17. HARERA Case No 97 between Sangeeta Yadav V/S Supertech Ltd and Investors Clinic Infratech Pvt Ltd
18. **Issues raised by the complainants**
 - i. Whether Supertech Ltd has necessary government approvals to construct the project and whether this project is registered with HARERA?
 - ii. Whether Supertech Ltd and Investors Clinic Infratech Pvt. Ltd have looted home buyers by giving wrong advertisements about necessary government approvals and construction?
 - iii. Whether Supertech Ltd. and Investors Clinic Infratech Ltd. have refused to refund the money of



complainants and are pressurizing him to shift to a costlier project?

19. Relief sought

The complainants are seeking the following reliefs:

- i. Refund of amount Rs 797,728.00 (Rs 350,000.00 booking amount + Rs 15,750.00 Service Tax on booking amount + Rs 431,978.00 second installment as per construction link plan) with 10.4 % interest from Supertech Limited. This amount was paid for flat # 0704 at Supertech Officer's Enclave.
- ii. Refund of amount Rs. 17,175.00 with 10.4% interest from Investor Clinic Infratech Pvt Ltd. This amount was paid as service charges for booking under project "Supertech Officers Enclave".



Reply on behalf of respondent no.2

20. It is submitted that that the instant complaint is covered by builder buyer agreement cum allotment letter executed between respondent no.1 and the complainants who booked

the apartment in the project being developed by respondent no. 1 and respondent no. 2 is not a party to the said agreement.

21. The said agreement was on a principal-to-principal basis and respondent no. 2 had no role under the said agreement. The answering respondent is a mis-joinder of parties in the present case. Also, there exists a principal and agent relationship between respondent no. 1 and 2 hence, principal is responsible for the acts of respondent no. 2.
22. It is submitted that the present complaint is a gross abuse of law against answering respondent no. 2 who has no obligation under the agreement signed between respondent no. 1 and the complainant. The respondent no. 2 provided information to the complainant about various projects open for booking in terms of their query and didn't press them to book a flat with respondent no. 1.
23. Also, the respondent no. 2 had charged a nominal fees for providing their services and the same were limited up to the booking/allotment of the unit. The answering respondent had no role after booking of the flat with the complainants and hence there was no connection between the complainants and answering respondent.



24. The complainant themselves opted the unit as well as payment plan that they wanted to book from respondent no. 1 and made payment directly to them. There is no default on the part of answering respondent and respondent no. 2 is not party to the above said agreement.
25. It is submitted that the answering respondent is service provider and real estate agent and is not responsible for construction of the projects and its completion as well as handling/giving the possession of the unit. The agent is not liable for his act under the Contract Act, 1872, principal is solely liable for each and every act of his agent
26. As per order dated 28.06.2018, passed by RERA authority, in the matter I.J Gohlot vs. Investors Clinic Infratech Pvt. Ltd. and M/s Amra Pali Princes Estate Pvt. Ltd., there is no monetary liability imposed on the Investors Clinic Infrastructure Pvt. Ltd.



Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

27. With respect to the **first and second issue**, it is an admitted fact on the part of respondent – Supertech Limited that on

account of certain unavoidable circumstances, they have to scrap the project and now they are ready to refund the amount alongwith prescribed rate of interest i.e. 10.75% per annum to the complainant/buyer. So, it is presumed that the respondent did not have necessary approvals and the issue is decided in favour of the complainants.

28. With respect to the **third issue**, the authority after perusal of the available records is of the view that the respondents have failed to refund the entire money paid by the complainant till date along with the prescribed rate of interest as demanded by the complainant. So, the respondents are directed to refund the entire amount taken from the complainants along with prescribed rate of interest from the date of receipt of the payment.

Findings of the authority

29. 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.



30. 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.
31. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
32. 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.
33. The respondent no. 1 has not filed reply so the authority has decided to proceed ex-parte against respondent no.1.
34. The authority is of the view that the respondents have failed to refund the entire money paid by the complainant till date along with the prescribed rate of interest as demanded by the complainant. So, the respondents are directed to refund the entire amount taken from the complainants along with



prescribed rate of interest from the date of receipt of the payment.

Decision and directions of the authority

35. 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) It is an admitted fact on the part of respondent - Supertech Limited that on account of certain unavoidable circumstances, they have to scrap the project and now they are ready to refund the amount alongwith prescribed rate of interest i.e. 10.75% per annum to the complainant/buyer. The respondents are directed to refund the amount alongwith prescribed rate of interest i.e. through RTGS in the account of the complainant within 90 days.

(ii) Respondent no.2 - Investors Clinic Infratech Pvt. Ltd. is also directed to refund the brokerage amount of Rs. 17,175/- to the complainant through RTGS in



the account of the complainant within a period of 90 days.

36. Complaint stands disposed of.
37. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.02.2019

Judgement Uploaded on 01.03.2019

