

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

Complaint no. : 914 of 2018
First date of hearing: 21.12.2018
Date of decision : 27.02.2019

Ms. Sanjana Joshi
Ms. Shashi Malhotra
Flat no. 108, Ayachi Apartment, Sector 45,
Gurugram, Haryana

Complainants

Versus

M/s Supertech Limited
Office: Supertech House, B-28/29, Sector 58,
Noida
M/s Investors Clinic Infratech Pvt. Ltd.
Office: IRIS Tech Park, 8th Floor, A Block, Sohna
Road, Sector 48, Gurugram-122003

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Amit Mishra
Shri Rishabh Gupta

Advocate for complainants
Advocate for the respondents

ORDER

1. A complaint dated 12.09.2018 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 Ms. Sanjana Joshi and Ms. Shashi Malhotra, against the promoter, M/s Supertech Limited and M/s Investors Clinic Infratech Pvt. Ltd., in respect of apartment described as below for not handing over possession due to scraping of the project which is an obligation under section 11(4)(a) of the Act ibid.

2. Since the allotment letter dated 06.08.2016 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application under section 34(f) of the Act ibid for non-compliance of obligation on the part of the respondent.

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

1.	Name and location of the Project	Officers Enclave in hill town, Sector 2, Sohna Road, Gurugram
2.	Flat/Apartment/Unit No.	503, 5 th floor, block A4,
3.	Flat measuring	985 sq. ft.
4.	Allotment letter	06.08.2016
5.	Date of application form as per statement of complainants	22.01.2016



6.	Date of booking as per statement of complainants	08.07.2016
7.	Nature of project	Plotted colony
8.	Date of execution of FBA	Not available
9.	Basic sale price	Rs. 41,61,625/-
10.	Total consideration amount as per account statement dated	Rs. 45,10,875/-
11.	Total amount paid by the complainant till date	Rs. 4,52,065/-
12.	Status of project	Scrapped

4. The details provided above have been checked as per record available in the case file. A flat buyer agreement is not available on record for the aforesaid apartment accordingly the possession of the same was to be delivered by July 2020 as per allotment letter.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance.

The reply has been filed on behalf of the respondents no. 2.

Facts of the complaint

6. The complainants submitted that the respondent no.1 is a company incorporated under the company Act and having its head office at "Supertech House" B-28-29, Sector-58, Noida-



201307 and registered office at 1114, hemkunt chambers, 89, nehru place, New Delhi-110019. The respondent no.2 is the real estate agent/channel partner of the respondent no.1.

7. The complainants submitted that pursuant to that advertisement, the complainant approached respondent no.1 for booking of a 2 BHK apartment in the said project through respondent no. 2 on 22.01.2016.

8. The complainants submitted that respondent no.1 through his representative showed prospectus of officers enclave high rise, hill town to the complainant and assured her that the said project is an approved one, building plans have been sanctioned & have got all the permissions from the concerned authorities to construct the said project. It was further informed to the complainant that the expected date of possession for high rise is 36+6 months from the date of builder-buyer agreement i.e Approx. February 2020.

9. The complainants submitted that only after seeing the advertisements and prospectus and on faith, beliefs & representations of the respondent no.1 and respondent no. 2, the complainant altered her position to her detriment and



entered into an agreement of sale for booking a flat on 22/1/2016 in the said project. It is submitted that the respondent no.1 booked an unit no. 503 on fifth floor in tower A4, Area 985 sq. ft. costing Rs. 4225 per sq. ft. in the said project and informed the complainant that the total cost of the said flat would be Rs. 45,10,875/-(forty five lakhs ten thousand and eight hundred and seventy five). It is further submitted that the complainant agreed for the said proposal and choose subvention plan (10:80:10) for payment and according to which she was supposed to pay 10% of the cost of flat at the time of booking, 10% at the time of offer of possession & rest 80% had to be funded by the bank & pre EMI till intimation of possession will be borne by respondent No.1. It is further submitted that as per the said plan, she paid an advance amount of Rs. 3,50,000/-(three lakhs and fifty thousand) on 26.01.2016 as consideration through cheque no. 520379 dated 26.01.2016 in the favour of supertech limited a/c officer's enclave and the same was debited from the bank account of the complainant.



10. The complainants submitted that as the agreement of sale was executed between the complainant and the respondent no.1, the complainant also paid Rs. 17,175/- (seventeen thousand one hundred and seventy five) as commission to the respondent no. 2 on 26.01.2016 through cheque no. 520380 dated 26.01.2016 in favour of investors clinic infratech private limited.

11. The complainants submitted that as per the terms & conditions of the agreement, the complainant applied for the Bank Loan & got the loan sanction letter dated 20.02.2016 from Indiabulls for making further payment of 80% to respondent no. 1 but the respondent no. 1 did not raise the demand for further payment neither from the complainant nor from the banker and thus the loan could not disburse from banker to respondent no.1 and the said sanctioned loan got lapsed.

12. The complainants submitted that respondent no.1 issued a payment demand letter dated 4.08.2016 to the complainant for payment of Rs. 84,890/- (eighty four thousand eight hundred and ninety only) and the same was paid by the



complainant as consideration amount towards booking of said flat to respondent no. 1 through cheque no. 520386 dated 15.09.2016 and the same was also debited from the bank account of the complainant.

13. The complainants submitted that respondent no.1 executed a builder-buyer agreement cum allotment letter with the complainant on 8.07.2016 and allotted a flat bearing no. 503 in tower A4 at 5th floor, area 985 sq. ft., type 2 BHK in officers enclave high rise, hill town situated at Sector 2, Sohna Road, Gurugram, Haryana. It is submitted that as per that agreement, the respondent no.1 was duty bound to inform the complainant by post or email for due date of the further payment but the respondent no.1 has been miserably failed in raising the demand for further payment for the allotted flat from the complainant till now.

14. The complainants submitted that they got the loan sanction letter second time from Indiabulls in September 2016 as the previous one dated 20.02.2016 got lapsed/expired due to non raising of demand by respondent no. 1 within the period of three months from the date of issuance of it.



15. The complainants submitted that respondent no. 2 called complainant telephonically for the first time in the month of June 2017 (after 18 months from the date of booking of flat) and informed her that respondent no.1 is unable to give the allotted flat due to unknown reasons and another flat can be given in some other project.

16. The complainants submitted that respondent no. 1 through his legal representative (AVS Legal, Advocates and Legal Consultants) sent a vague, irrational and preposterous legal notice dated 4.07.2018 to complainant (after 30 months from the date of booking of flat) asking for payment of Rs.34,79,119/- for some other unknown flat in officer's enclave Hill Town which was neither booked by the complainant on 22.01.2016 and nor allotted to her by the respondent No.1 on 08.07.2016 by builder-buyer agreement cum allotment letter. It is pertinent to mention that the complainant has undergone tremendous mental agony after seeing such an absurd legal notice.

17. The complainants submitted that they come to know that that there is no registered and approved project in the name of



officers enclave high rise in Hill Town in sector 2, Gurugram developed by respondent no.1. It is further pertinent to mention that respondent no.1 has not even registered the said project under HRERA as per section 3 of The Real Estate (Regulation and Development) Act, 2016 (Hereinafter RERA) which is mandatory for every developer to register every project with RERA from 01.05.2017.

18. The complainants submitted that issued a legal notice dated 21.08.2018 to the respondent no.1 asking for complete refund of Rs. 4,52,065/- along with interest @18% since 26.01.2016 but the respondent has neither refunded the money nor given any reply of the said legal notice.

Issue raised by the complainant

The issue raised by the complainants

- i. Whether the complainants are entitled to refund of the entire amount paid to the respondents along with interest @18 %?



Relief Sought

- i. Direct the respondent no.1 to refund the entire advance amount of Rs. 4,34,890/- along with 18% interest to the complainant under section 12 & 18 of the Act.
- ii. Direct the respondent no.2 to refund the commission amount of Rs. 17,175/- along with 18% interest to the complainant.
- iii. Take appropriate action against the respondent no.1 for violation of section 3, 7 and 11 of the Act.
- iv. Take appropriate action against the respondent no.2 for violation of section 10 of the Act.
- v. Direct the respondent no.1 for making payment of litigation fees of Rs. 50,000/- to the complainant.
- vi. Direct the respondents for making compensation of Rs. 50,000/- to the complainant for causing physical harassment, mental agony, misrepresentation and depriving the complainant from her hardcore savings.



- vii. Pass any other order/direction in the favour of the complainant and against the respondents in the interest of justice, fair and equity.

Reply on behalf of respondent no. 2

19. The respondent submitted that he is a real estate advisor and not a party to the agreement executed between the complainants and respondent no. 1.
20. The respondent submitted that the answering respondent no. 2 in the instant case is a mis-joinder of a parties.
21. The respondent submitted that he has no obligation under the agreement signed between the complainants and respondent no. 1.
22. The respondent submitted that he has provided information to the complainants about the various projects open for booking in the terms of her query.
23. The respondent submitted that he had charged nominal fee for providing their services and thus the same were limited up to the booking of the booked unit.



24. The respondent submitted that he has no role after the booking of the flat with complainants and hence there was no contact or connection between the complainants and the answering respondent.
25. The respondent submitted that the complainants themselves selected the respondent no. 1 project and the unit as well as the payment plan that they wanted to book and the answering respondent arranged the booking form from the respondent no. 1 and the booking form was submitted by the complainants herself to the respondent no. 1 and made payment directly.
26. The respondent submitted that he is real estate agent and is not responsible for the construction of the projects and its completion as well as the handling / giving the possession of the unit by the respondent no. 1 as the terms and conditions are settled with regard to the same between the complainant and the respondent no. 1 directly and were negotiated and set out in the builder buyer agreement cum allotment letter to which the respondent no. 2 was not a party.
27. The respondent submitted that as per order dated 28.06.2018, passed by the RERA authority, in the matter I.J Gohlot versus



Investor Clinic Infratech pvt. Ltd. and M/S Amra Pali Princes Estate Pvt. Ltd., there is no monetary liability imposed on the investor clinic infrastructure Pvt. Ltd.

Determination of issue

28. After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the issues wise findings of the authority is as under:
29. With respect to **first issue** raised by the complainants, it is 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 complainants. The respondents are directed to refund the amount alongwith prescribed rate of interest through RTGS in the account of the complainants 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 complainants through RTGS in the account of the complainant within a period of 90 days.



Findings of the Authority

30. The authority has complete subject matter 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

31. It is 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 complainants. The respondents are directed to refund the amount alongwith prescribed rate of interest



through RTGS in the account of the complainants 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 complainants through RTGS in the account of the complainant within a period of 90 days.

Decision and directions of the authority

32. 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 issue the following direction to the respondents in the interest of justice and fair play:

- i. The respondent is directed to refund the entire amount paid by the complainants along with prescribed rate of interest @ 10.75% p.a. to the complainants through RTGS in the account of the complainants within 90 days.
- ii. The respondent no. 2 investors clinic Infratech pvt. Ltd. is also directed to refund the brokerage amount of Rs. 17,175/- to the complainants through RTGS in the account of the complainant within a period of 90 days.



33. The order is pronounced.

34. Case file be consigned to the registry.

(Samir Kumar)

(Subhash Chander Kush)

Member

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.02.2019

Judgement uploaded on 18.03.2019



HARERA
GURUGRAM

