

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

**Complaint No. : 1506 of 2018**  
**First date of hearing : 06.03.2019.**  
**Date of Decision : 06.03.2019.**

Mr. Rakesh Mohan and Mrs. Ragini Rakesh  
Mohan.

R/o.78, Rajat Apartments, Mount Pleasant  
Road, Mumbai, Maharashtra - 400006

**Complainants.**

Versus

1. M/s Supertech Ltd. (through it's A.R.)

**Office Address:** 1114, 11<sup>th</sup> floor, Hemkunt  
Chambers, 89, Nehru Place, New Delhi-110019.

**Respondent.**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Subhash Chander Kush

**Chairman  
Member**

**APPEARANCE:**

Mr. Akash Gupta  
Mr. Rishabh Gupta

Advocate for the complainants.  
Advocate for the respondent.

**ORDER**

1. A complaint dated 16.11.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Rakesh Mohan and Mrs. Ragini Rakesh Mohan, against the respondents M/s Supertech Ltd., Mr. R. K. Arora, Mr. Mohit Arora and Mrs. Sangeeta Arora, chairman, M.D. and JMD of



M/s. Supertech Ltd. on account of violation of the clause 1 of “possession of the unit” clause of buyer developer agreement dated 10.09.2014 in respect of flat/unit no. R0308M1902/flat#1902, 19<sup>th</sup> floor in tower M, measuring 1430 sq. ft. in the project “supertech hues” at sector 68, Gurugram for not handing over possession on the due date i.e. by August, 2018 which is an obligation under section 11(4)(a) of the Act *ibid.*

2. Since, the builder developer agreement dated 10.09.2014 was executed prior to the commencement of the Haryana Real Estate (Regulation and Development) Act, 2016, therefore the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as application under section 34 (f) for non-compliance of obligation on the part of the promoter/ respondent herein.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Supertech hues”, Village Badshahpur, Sector 68, Gurugram.
2.	DTCP license no.	106 and 107 of 2013 dated 26.10.2013
3.	Nature of real estate project	Group housing project
4.	Flat/unit no.	R0308M01902/FLAT#1902
5.	RERA Registered/ unregistered	<b>Registered vide no. 182 of 2017</b>
6.	Date of completion as per RERA registration certificate.	<b>31.12.2021</b>



7.	Date of booking	12.08.2014
8.	Date of execution of builder developer agreement <b>Note - incomplete copy of agreement is filed.</b>	10.09.2014 <b>(Annx P/2)</b>
9.	Payment Plan	Possession linked payment plan <b>(Pg. 18 of the complaint)</b>
10.	Total consideration amount as per the agreement	Rs.1,10,59,629/-
11.	Total amount paid by the complainants till date	Rs.35,00,302/- <b>(Annx P/1 and P/3)</b>
12.	Due date of delivery of possession as per possession clause 1 of BBA i.e. Feb,2018 + 6 months' grace period	<b>31<sup>st</sup>August, 2018</b>
13.	Delay in handing over possession till date	6 months approx.

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 buyer developer agreement dated 10.09.2014 is available on record for the aforesaid flat/unit no. R0308M01902/flat#1902 according to which the possession of the said unit is to be delivered by 31<sup>st</sup> August, 2018. The project has been delayed and the respondents have failed to fulfil its contractual obligation till date which is in violation of the provisions of section 11(4)(a) of the Act *ibid*.

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



The respondent through its counsel appeared on 06.03.2019.

The case came up for hearing on 06.03.2019. The reply has been filed by the respondent on 31.12.2018 which has been perused.

**Facts of the complaint:-**

6. Briefly put facts relevant for the disposal of the present complaint are that on 12.08.2014, complainants booked a residential unit in the respondents' project, namely 'supertech hues' located at sector 68, Gurugram. Pursuant to aforesaid booking of the complainants, respondent no. 1 allotted unit no. R0308M01902/flat#1902, on 19<sup>th</sup> floor, tower M in favour of complainant. On 10.09.2014 builder developer agreement for the allotted unit was executed between the parties.

7. As per the terms of the agreement dated 10.09.2014, possession of the unit was to be delivered by February, 2018 plus 6 months' grace period thereof i.e. by August, 2018. The total consideration of the unit was agreed at Rs. 1,10,59,629/- as against which the complainants have made total payment of Rs. 35,00,302/- under the possession linked plan.

8. The complainants alleged that on visiting the site, it came to his notice of the complainants that the construction at site



has not been started. It was further alleged by the complainants that the respondents have failed to complete the construction and deliver the possession till date despite repeated reminders from the complainants. Moreover, the respondents did not refund the paid amount to the complainants despite service of legal notice in September, 2018. Hence, the complainants were constrained to file the present complaint before this authority.

**Issues to be decided: -**

- i. **Whether the respondents have not delivered the possession of the allotted unit to the complainants till date?**
- ii. **Whether the complainants are entitled to get refund of the entire amount alongwith interest?**

**Reliefs sought: -**

- **Direct the respondents to refund Rs. 35,00,302/- paid by the complainant alongwith interest as prescribed by this authority from the date of booking till its realization.**

**Respondents' reply:-**



9. Respondent no. 2 to 4 have filed an application alongwith its reply seeking deletion of their names from the array of parties on the ground that the complaint is not maintainable qua them as section 69 pertaining to the offences by companies can only be invoked in case of an offence under section 59 of the Act for non- registration. In the present case, project of the company is already registered before this authority. Thus, respondent no. 2 to 4 have not violated any provision of RERA Act.
10. It is pertinent to mention here that similar view has also been taken earlier by this authority in case titled Sonu Sunita v. Vatika Ltd. (CR 219/2018 order dated 10.07.2018). The complaint is bad for mis joinder of necessary parties and is liable to be dismissed.
11. The respondents submitted that the project 'supertech hues' is registered under the Haryana real estate regulatory authority vide registration no. 182 of 201 dated 04.09.2017 and as per the validity of the said registration certificate the respondents have undertaken to complete the project on or before 31.12.2021.
12. The respondents have submitted that the possession of the subject unit was to be delivered by August, 2018 , however,



the completion of the building has been 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 respondents and if non-delivery of possession is a result of any act beyond control of the respondents, the respondents shall be entitled to a reasonable extension of time for delivery of possession of the said premises as per the terms of agreement.

13. The respondents have further submitted that tower M is almost completed which is evident from the photographs annexed and the respondents have also undertaken to complete the project by the year 2021.
14. The respondents have contended that the complainant cannot claim reliefs beyond the terms of builder buyer agreement dated 10.09.2014.



**Determination of issues:-**

15. As regards **issue no. i and ii** raised by the complainants, from the perusal of record, the authority came across that as per the terms (clause 1 under the heading possession of the unit clause) of builder developer agreement dated 10.09.2014 for subject unit no. R0308M01902/flat#1902 the possession of

the flat/unit was to be delivered by the respondent by February, 2018 with further grace period of 6 months. So, the due date of delivery of possession on calculation comes out to be 31<sup>st</sup> August, 2018, however, the respondent has failed to deliver the possession till date. Since, the project is registered and the revised date of delivery of possession is mentioned in the RERA registration certificate as 31.12.2021. Order for the refund of the paid amount at this stage is not feasible in the interest of justice as it will defeat the interest of other allottees who wishes to continue with the project. There is a delay of 6 months approx. in delivery of possession for which the complainants are entitled for delayed possession charges at prescribed rate of interest @ 10.75% p.a. as per the provision of section 18(1) of the Act *ibid*.

16. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act *ibid*.





**Findings of the authority: -**

17. 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 complainants 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.



18. Arguments heard. Project is registered with the authority. As informed by the learned counsel for the respondent that super structure of tower M is ready upto 22<sup>nd</sup> floors out of 28 floors to be constructed. Learned counsel for the respondent has stated at the bar that the project is likely to be completed by December,2021. The Tower M where the flat/unit of the

complainant is situated will be completed before 31st Decmenbr,2020 and possession will be handed over after receiving OC from the competent authority. Learned counsel for the complainant submitted that they have lost faith in the builder as many times in the past the commitment for completing the project has not been honored.

19. As per clause 1 of the BBA executed between the parties on 10.09.2014, possession of the booked unit was to be handed over to the complainant by February, 2018+ six months grace period which comes out to be 31.08.2018 but the respondent has failed to deliver the booked unit to the complainant.
20. Keeping in view the stage of construction and in the interest of other allottees authority is of the view that rather than allowing refund at this stage, interest at the prescribed rate of 10.75% p.a. for every month of delay be ordered to be paid to the complainants. Interest accrued so far shall be paid within a period of 90 days from the date of issuance of this order and thereafter on 10<sup>th</sup> of each subsequent month.



**Decision and directions of the authority: -**

21. 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) The respondent no. 1 is duty bound to hand over the possession of the said unit on or before 31.12.2020.
- (ii) The respondent no. 1 is liable to pay interest for every month of delay at prescribed rate i.e. 10.75% p.a. from 31.08.2018 (due date of delivery of possession) till the handing over of the possession to the complainants.
- (iii) The interest so accrued at the prescribed rate of interest i.e. 10.75% p.a. from 31.08.2018 (due date of delivery of possession) till the date of this order be paid within 90 days and thereafter monthly interest be paid before 10<sup>th</sup> of subsequent month.
- (iv) The application filed by the respondent no. 2 to 4 (Mr. R.K. Arora, Mr. Mohit Arora and Mrs. Sangeeta Arora, M.D. and Chairman of respondent no. 1) seeking deletion of their names from the array of



parties is allowed and complaint against them is hereby dismissed.

22. The order is pronounced.

23. Case file be consigned to the registry.

**(Dr. K.K. Khandelwal)**  
Chairman

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: -06.03.2019.

Judgement uploaded on 19.03.2019



HARERA  
GURUGRAM

