

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

Complaint No. : 1687 of 2018
Date of First hearing : 06.03.2019
Date of Decision : 06.03.2019

Col. Manu Bhalla
R/o J-7059, Devinder Vihar,
Sector-56, Gurugram-122011

...Complainant

Versus

M/s Supertech Ltd.
Regd. Office at: 1114, 11th Floor, Hemkunt
Chamber, 89, Nehru Place, New Delhi-
110019

...Respondent

CORAM:

Dr. K.K.Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Col. Manu Bhalla
Shri Rishabh Gupta

Complainant in person
Advocate for the respondent



ORDER

1. A complaint dated 22.11.2018 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 complainant Col. Manu

Bhalla, against the promoter M/s Supertech Ltd. for unit described below in the project “Araville” for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer’s agreement has been executed on 24.07.2012, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Araville”, Sector 79, Gurugram
2.	Unit no.	R032E01005, tower ‘E’
3.	Unit area	1295 sq. ft.
4.	Project area	10 acres
5.	Registered/ not registered	Registered (GGM/16/2018)
6.	Revised date of handing over possession as per RERA registration certificate	31.12.2019
7.	Date of approval of building plan	10.05.2012 (as per agreement, pg 20 of the complaint)



8.	Nature of real estate project	Group housing project
9.	DTCP license	37 of 2011 dated 26.04.2011
10.	Status of project	Tower E almost complete (as per submissions of respondent, photographs of current status of project, annexure R3 of the reply)
11.	Date of booking	06.05.2012
12.	Date of flat buyer's agreement	24.07.2012
13.	Payment plan	Down payment plan (as per addendum to allotment letter dated 25.12.2014, pg 52 of the complaint) Note: As per the agreement, the payment plan was construction linked. However, vide the aforesaid addendum it was changed.
14.	Total consideration amount	Rs. 76,17,478/- (as per agreement, pg 21 of the complaint)
15.	Total amount paid by the complainant	Rs.61,41,720/- (as per the complaint)
16.	Date of delivery of possession	31.05.2015 Clause 22- November 2014 + 6 months grace period, i.e. May, 2015
17.	Delay for number of months/ years upto date 06.03.2019	3 years 9 months
18.	Penalty clause as per flat buyer's agreement dated 24.07.2012	Clause 24 i.e. Rs.5.00/- per sq ft of super area



		of unit per month for the period of delay
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4. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant and the respondent. A flat buyer's agreement dated 24.07.2012 is available on record for unit no. R032E01005, tower 'E', according to which the possession of the aforesaid unit was to be delivered by 31st May, 2015. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.
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 06.03.2019. The reply has been filed by the respondent and the same has been perused by the authority.

Facts of the complaint

6. On 06.05.2012, the complainant booked a unit in the project named "Araville", Sector 79, Gurugram as a pre-launch booking by paying an amount of Rs.6,00,000/- along with Rs.27,461/- as service tax. Subsequently, the flat buyer's agreement was executed on 24.07.2012. Accordingly, the



complainant was allotted a unit bearing no. R032E01005, tower 'E', with a super area of 1295 sq. ft. based on construction linked plan against a total consideration of Rs.76,17,478/-.

7. The complainant submitted that in the agreement, as per clause 22, the possession should have been handed over by 30th November, 2014.

8. The complainant submitted that he regularly paid the respondent as per the demand/plan. However, just when the date for handing over of the unit approached, the respondent suddenly revised the payment plan on 25.12.2014 by initiating an "addendum to the allotment letter", executed between the respondent and the complainants, vide which a new payment schedule was evolved, as under :-

- i. 60% - on immediate basis.
- ii. 20% - on or before 30th September 2015.
- iii. 20% - at the time of offer of possession.

9. The complainant submitted that he had deposited Rs.50,10,599/- when the addendum was introduced by the respondent. Thereafter, he deposited Rs.10,73,666/- on



18.09.2015 towards second instalment (20%) as per the new payment schedule.

10. The complainant submitted that the respondent communicates only when he wants funds from the complainant. It is submitted that the complainant has paid more than 80% of the total sale consideration amount and the respondent has utilized these funds partly for the construction of the project and balance towards his own financial benefit. The respondent initiated an early payment scheme on discounted price vide his email dated 11.12.2017 and thereby asking the complainant to make a final payment of Rs.13,45,851/- by 12.01.2018, by offering a discount of Rs.1,29,907/- against outstanding amount of Rs.14,75,758/-. The total amount thus paid by the complainant to the respondent towards the cost of the unit, as on 01.12.2017 amounts to Rs.61,41,720/- (80.63%).

11. The complainant further submitted that he recently learned about the progress of the project through the judgment of the Haryana Real Estate Regulatory Authority, Gurugram dated 10.07.2018 while disposing of the complaint no: 65 of 2018 case titled as ***M/s Plaza Fincap Pvt Ltd Versus M/s Superech Ltd***, wherein a local commissioner was appointed by the



authority to verify the actual status of tower D and E and he informed through his report that 70% work had been completed. Further, the respondent through an affidavit dated 19.06.2018 has assured the authority that they will give possession of units by 19.12.2018.

12. The complainant submitted that he has taken a housing loan from India Bulls Housing Financing Limited (IBHFL) for financing the purchase of the flat. A loan amount of Rs.46,33,736/- has been approved, he has however so far taken a loan of only Rs.30,67,076/-. It is submitted that the complainant intends to take the balance amount of loan after 'letter of possession' is issued by the respondent. However, he has been informed by IBHFL that they will down size the loan to the existing level, if he does not avail balance loan amount, he has however requested IBHFL not to down size the loan as he is keen to remain part of the project keeping in view the respondent's affidavit dated 19.06.2018 to the authority that they will be giving possession of units by 19.12.2018.

13. Issues to be determined

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



- I. Whether the complainant is entitled for interest with effect from November 2014 on the delayed possession till realization from the respondent?
- II. Whether the complainant is entitled for possession of their assigned flat by 19.12.2018, as per the undertaking given by the respondent through the affidavit dated 19.06.2018 to the authorities in the complaint no. 65 of 2018 case?
- III. Whether the complainant is entitled to exit the project on account of delayed possession?

14. Relief sought

- I. Direct the respondent to pay delayed possession interest from November, 2014 till realization.
- II. Direct the refund the amount paid by the complainant till date towards the cost of the said flat, together with interest at the prescribed rate if the respondent fails in handing over possession by 19.12.2018 as per the affidavit submitted by him in complaint no. 65 of 2018.



Respondent's reply

15. The respondent submitted that the complainant has not come with clean hands before this hon'ble authority and has

suppressed true and material facts.

16. The respondent submitted that the project in question is registered with the authority vide registration no. 16 of 13.10.2018 which is valid upto December, 2019.

17. 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. There is no malafide intention of the respondent to get the delivery of project, delayed. It is also pertinent to mention that due to orders passed by the Environment Pollution (Prevention and Control) Authority, the construction was/has been stopped for few days due to high rise in pollution in Delhi NCR.



18. The respondent further submitted that due to stagnation, sluggishness, downfall 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. The plea of allottees in all the complaints for refund is not tenable in the eye of law. Thus, due to insufficient monetary fund as well as huge down fall in the real estate market, all the allottees have planned to seek refund of the invested money and let the promoter suffer for all aforesaid circumstances.

19. It is submitted by the respondent that 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. Thus, the relief of refund claimed is not unsustainable in the eye of law rather is a pre-planned action to get refund in order to be safe from breach of contract in future for making further instalments, by filing such frivolous complaints.

20. The respondent submitted that the said project is a continuance business of the respondent and it will be completed by the year December 2019. The current status of the tower-E is that it is almost completed. The respondent is expected to provide possession of tower-E by December



2019. No refund at this stage can be made to the complainant when the tower is completed/developed.

21. The respondent further submitted 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.

22. The respondent submitted that no pre-launch booking was made to the complainant. Further, it is denied that when the handing over of the unit approached, the respondent suddenly revised the payment plan on 25.12.2014 by initiating an 'addendum to the allotment letter' executed between the parties. It is submitted that the said addendum was executed mutually for the better of the project. The complainant wilfully executed the said allotment letter after getting satisfied with the terms incorporated in it.

23. The respondent further submitted that the affidavit given by the respondent is for tower D and not for tower E. The plea of complainant about submission of affidavit to give possession date is not maintainable in the eye of law of law as it was not of tower E.

Determination of issues

After considering the facts submitted by the complainant,



reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

24. With respect to **first and third issue**, as per clause 22 of the flat buyer's agreement dated 24.07.2012, the possession was to be handed over by November 2014 + 6 months grace period, i.e. by 31st May, 2015. Accordingly, the respondent failed in handing over the possession on or before the said due date. However, the project in question is registered with the authority vide registration no. 16 of 13.10.2018 wherein the respondent has undertaken to complete the construction by 31.12.2019. Further, as per the pictures attached by the respondent and as per the submission of the report by the local commissioner appointed in complaint no. 65 of 2018 titled as *M/s Plaza Fincap Pvt Ltd Versus M/s Superech Ltd*, tower E is almost complete. Thus, keeping in view the status of the project, interest of other allottees and other intervening circumstances, the authority is of the considered opinion that complainant shall be entitled to delayed possession interest at the prescribed rate of 10.75% per annum on account of delay in handing over possession. The said charges shall be given from the due date of possession



till the offer of possession.

25. With respect to **second issue**, as per clause 22 of the flat buyer's agreement dated 24.07.2012, the due date of possession of the unit in question comes out to be 31st May, 2015. The contention of the complainant that the respondent vide affidavit dated 19.06.2018 in the matter of complaint no. 65 of 2018 undertook to handover possession by 19.12.2018 is not tenable as it has been submitted by the respondent that the said affidavit pertains to tower D and not tower E. Thus, this issue becomes infructuous.

26. 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 by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

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

Findings of the authority

28. **Jurisdiction of the authority-** 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 14.12.2017 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.

29. As per clause 22 of the agreement executed on 24.07.2012, the possession of the booked unit was to be handed over to the complainant by 31.05.2015. Till date no possession has been handed over to the complainant. During the proceedings dated 06.03.2019, the counsel for the respondent submitted that tower E where the flat of the complainant is situated is almost complete. Counsel for the respondent informed that in this project occupation certificate for two towers has already been obtained and with regard to tower E possession would be given by 31st December, 2019 after obtaining occupation certificate. Keeping in view the present status of



the project, the authority is of the opinion that interest at prescribed rate of 10.75% p.a. be awarded to the complainant for every month of delay till handing over the possession.

Decision and directions of the authority

30. 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 pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant.
- (ii) The respondent is directed to pay to the complainant interest accrued from 01.06.2015 to date of this order within 90 days from the date of order and thereafter on or before 10th of every subsequent month till final offer of possession.
- (iii) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

31. The complaint is disposed of accordingly.

32. The order is pronounced.

33. Case file be consigned to the registry.



(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 06.03.2019

Judgement uploaded on 18.03.2019

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