

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

Complaint No. : 559 of 2018
Date of First hearing : 18.09.2018
Date of Decision : 07.02.2019

1. Mr. Roopesh Kumar Chauhan
2. Ms. Amita Singh
R/o A1-277, 1st floor, Sushant Lok Phase-II,
sector-55, Gurugram-122003.

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Roopesh Kumar Chauhan Complainant in person
and Ms. Amita Singh
Shri Sushil Yadav Advocate for the complainants
Shri Rishabh Gupta Advocate for the respondent



ORDER

1. A complaint dated 18.07.2018 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.

Roopesh Kumar Chauhan and Ms. Amita Singh, against the promoter M/s Supertech Ltd., on account of violation of para 1 of possession of the buyer developer agreement executed on 14.07.2014 for unit no.F/0202. 2nd floor, with a super area of 1180 sq. ft. in the project “Supertech Hues” for not giving possession on the due date i.e. 31.10.2017 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the buyer developer agreement has been executed on 14.07.2014, therefore, the 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	“Supertech Hues, Village Badshahpur, Sector 63, Gurugram
2.	Unit no.	F/0202, 2 nd floor
3.	Unit area	1180 sq ft
4.	Registered/ not registered	Registered (182 of 2017 dated 04.09.2017)
5.	Revised date of delivery of possession	31.12.2021



6.	Nature of real estate project	Group housing
7.	DTCP license	106 & 107 of 2013 dated 26.12.2013
8.	Date of booking	12.10.2013
9.	Date of buyer developer agreement	14.07.2014
10.	Payment plan	Possession linked plan
11.	Total consideration amount	Rs. 90,46,680/- (as per agreement)
12.	Total amount paid by the complainant	Rs. 27,35,949/- (As per the complaint)
13.	Due date of delivery of possession from the date of execution of buyer developer agreement	31.10.2017 As per the possession para where the possession of the allotted unit will be given by the developer in 42 months i.e April 2017 including 6 months grace period.
14.	Delay for number of months/ years till date	1 year 3 months 7 days
15.	Penalty clause as per buyer developer agreement dated 17.07.2014	Rs. 5/- per sq.ft of super area of the allotted unit per month for any delay in handing over possession beyond the given possession date plus period of 6 months



3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A buyer developer

agreement dated 14.07.2014 is available on record for which the possession of the aforesaid unit was to be delivered by 31.10.20187

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared through his counsel on 11.12.2018. The case came up for hearing on 11.12.2018, 10.01.2019 and 07.02.2019.

Facts of the complaint

5. Briefly stating the facts of the complaint, the complainants Mr. Roopesh Kumar Chauhan and Ms. Anita Singh booked an apartment measuring 1180 sq.ft. for basic sale price of Rs. 7582680/- and total sale consideration is Rs. 9046680/- which includes BSP, car parking, IFMS, club membership, PLC, etc. out of the total sale consideration, the complainants made payment of Rs. 2735949/- to the respondents as it is a possession linked plan.

6. The buyer developer agreement dated 14.07.2014 the respondent has allotted a unit bearing no. F/0202 on 2nd floor in tower-F having super area of 1180 sq.ft. to the complainants.



7. The complainants regularly visited the site but were surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. The respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the tower without completing the work. Despite receiving all payment as demanded by the respondent for the said flat and despite repeated requests and reminders over phone calls, emails and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.
8. Due to the omission on the part of the respondent the complainants has been suffering from disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses.
9. The respondent has exploited the complainants by not providing the possession of the flat even after a delay of almost 14 months from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation scheme clause in the agreement.



10. The complainants has requested the respondent several times on making telephonic calls and also personally visiting and sent an email on dated 18.06.2017 to the office of the respondent for either to deliver possession of the flat in question or to refund the amount along with interest @24% per annum on the amount deposited by the complainants but respondent has flatly refused to dos so.

11. Issues raised by the complainants

- I. Whether the respondent delayed in handing over the possession of the flat in the stipulated time?
- II. Whether the interest cost being demanded by the respondent is very higher i.e 24% which is unjustified and unreasonable?

12. Relief sought

- I. Direct the respondent to refund the amount paid by the complainants till date, i.e. Rs. 27,35,949/- , along with interest @ 24% per annum on compounded rate from the date of booking of the flat in question.

Respondent's reply

13. The respondent stated that the present complaint is not maintainable in law or facts. The project "Supertech Hues" is registered under the Haryana Real Estate Regulatory



Authority registration certificate no. 182 of 2017 dated 04.09.2017. The authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021. The respondent hereby undertakes to complete the said project on or before 31.12.2021.

14. 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 a result of any act, beyond control of the respondent, the respondent will 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.
15. The respondent submitted that the possession clause is also subject to the timely payment of all instalments and other dues by the allottees. The respondent had already acknowledged about the complete construction of completion of superstructure through email dated 15.11.2017 to the complainants. The complainants still have not paid the instalment in time as per the payment plans. Thus, the complainant is in arrears of instalment.



16. The respondent submitted to issue directions to the complainants to make the outstanding payment of Rs. 31,35,408/- along with interest, till the said payment is being made to the respondent.
17. The respondent further submitted that the relief of refund claimed by every allottee is not sustainable in the eyes of law rather is a preplanned to get refund their money to get safe from breach of contract in future for making further instalments, by filing such frivolous complaints.
18. The respondent further submitted that the project is a continuance business of the respondent and it will be completed by the year 2021. The current status of the project is almost 70-75% of the building has been constructed and only internal development is yet to be completed.
19. The respondent submitted that the builder undertakes to complete the project by the year 2021 as submitted before the authority as per RERA Act, also the respondent had disclosed the additional information before the hon'ble forum while getting the project registered under RERA.



Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the

authority decides seriatim the issues raised by the parties as under:

20. In regard to the **first issue** raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date i.e 31.10.2017 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act.
21. With respect to the **second issue** raised by the complainants, the complainant is entitled to prescribed rate of interest i.e 10.75% per annum. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1).
22. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



“34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents

under this Act and the rules and regulations made thereunder.”

23. 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 which is reproduced below:

“37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

Findings of the authority

24. The respondent admitted the fact that the project Supertech Hues is situated in Sector-68, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

25. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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 complainants at a later stage.

26. The authority is of the view that the respondent has not delivered the unit in time and as such the complainant is entitled to delayed possession charges at prescribed rate of interest w.e.f October 2017 as per the provisions of section 18(1) of the Act till the offer of possession.

27. **Decision and directions of the authority**

28. 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 give the complainants delayed possession charges at prescribed rate of



interest i.e. @10.75% per annum with effect from October 2017 till the offer of possession.

- (ii) The arrears of interest so far shall be paid to the complainant within 90 days from the due date of the order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- (iii) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

29. The complaint is disposed of accordingly.

30. The order is pronounced.

31. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.02.2019

Judgement uploaded on 19.03.2019