

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

Complaint No. : 1747 of 2018
Date of first hearing : 07.03.2019
Date of Decision : 07.03.2019

1. Sh. Bhavesh Panwar
2. Smt. Anjna Panwar
Both R/o 48/4, Marla, Model Town,
Gurugram-122001 **...Complainants**

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 **Chairman**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Sh. B.L.Jangra Advocate for the complainants
Sh. Rishabh Gupta Advocate for the respondent



ORDER

1. A complaint dated 26.11.2018 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 complainants Sh. Bhavesh Panwar and Smt. Anjna Panwar, against the promoter M/s

Supertech Ltd., on account of violation of clause 25 of the buyer developer agreement executed on 08.07.2014 for unit no. B/0804, tower no. B, with a super area of 1180 sq. ft. in the project "Supertech Hues" 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 buyer developer agreement has been executed on 08.07.2014, 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	"Supertech Hues", Sector 68, Gurugram
2.	Unit no.	B/0804, tower B
3.	Unit area	1180 sq. ft.
4.	Registered/ not registered	Registered (182 of 2017 dated 04.09.2017)
5.	Revised date of handing over possession as per RERA registration certificate	31.12.2021

6.	Nature of real estate project	Group housing colony
7.	DTCP license	106 & 107 of 2013 dated 26.12.2013
8.	Date of booking	25.02.2014 (as per agreement, pg 67 of the complaint)
9.	Date of buyer developer agreement	08.07.2014
10.	Payment plan	Construction linked plan (as per agreement, pg 67 of the complaint)
11.	Total consideration amount	Rs. 86,07,720/- (as per agreement, pg 67 of the complaint) Rs.83,16,570/- (as per the complaint, after deduction of Rs.2,91,150/- on account of rebate as per clause 5 of the agreement, pg 70 of the complaint)
12.	Total amount paid by the complainants	Rs. 64,07,901.07/- (as per receipts attached with the complaint)
13.	Date of delivery of possession as per buyer developer agreement dated 08.07.2014	Clause 25- 42 months, i.e. August 2017+ 6 months grace period, i.e. by 28.02.2018
14.	Delay for number of months/ years upto date 07.03.2019	1 year approximately
15.	Penalty clause as per buyer developer agreement dated 08.07.2014	Clause 25 i.e. Rs.5.00/- per sq ft of super area per month for the period of delay



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 08.07.2014 is available on record for unit described above according to which the possession of the aforesaid unit was to be delivered in 42 months, i.e. by August 2017+ 6 months grace period, i.e. by 28.02.2018.
4. 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 07.03.2019. The reply has been filed by the respondent and the same has been perused by the authority.

Facts of the complaint

5. The complainants submitted that believing the representations made by the respondent, they booked a unit bearing no. J/0804 (2 BHK) on 8th floor in the project named "Supertech Hues" by paying signing amount of Rs. 6,00,000/- on 02.02.2014 which was duly acknowledged by the respondent.
6. The complainants submitted that they were allotted flat no. J/0804 at the time of booking but changed the allotment unilaterally to B/0804 at the time of signing the buyer



developer agreement on 08.07.2014 and made them to sign the same under threat of cancellation with increased area of 50 sq. yards despite protest by the complainants.

7. The complainants submitted that as per clause 25 of buyer developer agreement dated 08.07.2014, the possession of the residential unit bearing no. B/0804 was to be delivered by the respondent by August 2017.
8. The complainants submitted that as on date they have paid part consideration sum of Rs. 64,07,901.07/- to the respondent as per construction link payment schedule mentioned at page no. 4 of the buyer developer agreement and never defaulted in respect of their obligation under the terms and conditions of the agreement.
9. The complainants submitted that they took a home loan of Rs.24,00,000/- from Allahabad Bank to finance the said flat and had already paid interest of Rs. 4,32,046/- during the period from 2016-2018. The interest cost has caused added burden upon the complainants.
10. The complainants submitted that till date the respondent has failed to complete the construction and handover possession to the complainants despite expiry of time period of August 2017. It is further submitted that the complainants had



visited the office of the respondent several times seeking information about the date of completion of the project since the date of booking but the officials of the respondent neglected to prove any specific date of the project and every time they were assured that the project will be completed as the company is in the process of the construction whereas no such progress could be seen by the complainants when they visited the site till October 2018. The complainants felt cheated by false assurances of the respondent and therefore, conveyed the officer of the respondent in the month of October 2018 that they are not interested in purchasing the above unit any more on account of non-completion for alleged breach of buyer developer agreement. Hence, the complainant sought cancellation and refund of the consideration amount paid along with consequential penalty and interest charges but the respondent refused to refund the same and gave evasive replies.



11. The complainants submitted that they have invested all their hard-earned money in said flat but till date the entire project is still incomplete and despite regular follow up, the respondent refused to refund on one pretext or another, therefore the complainant is left with no other efficacious remedy available except to file the present complaint seeking

refund of money invested along with interest. The complainants are not only deprived of their hard-earned money but are also subject to unwanted interest and EMI liability from the banker.

12. Issues to be determined

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

- I. Whether the respondent had deliberately failed to complete the construction of the booked flat within the period of 42 months from the date of signing of the buyer developer agreement dated 08.07.2014 and had violated section 14(1) and 18 (1) (a) of the said Act?
- II. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for delay in completion of the construction?
- III. Whether the respondent is liable to refund the principal amount of Rs. 64,07,901.07/-?
- IV. Whether the respondent is liable to pay interest under the provision of section 18 (b) of the RERA Act on account of non-completion of the project?



13. Relief sought

- I. Direct the respondent to refund the amount paid by the complainants till date, i.e. Rs.64,07,901.07/- with interest to the complainants for violation of section 18 of the RERA Act.
- II. Direct the respondent to pay the interest of Rs.4,32,046/- paid by the complainants from the period of 2016-2018 to the Allahabad Bank.

Respondent's reply

14. The respondent submitted that the complainants have not come before this authority with clean hands and have suppressed true and material facts from the authority.
15. The respondent submitted that the project "Supertech Hues" is registered under the Haryana Real Estate Regulatory Authority vide 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. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project on or before the year 2021.
16. 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. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. 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.

17. 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.

18. 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 eyes 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.
19. The respondent further submitted that the said project is a continuance business of the respondent and it will be completed by the year 2021. The current status of tower- B is that almost 70 % of the building has been constructed and some internal development is yet to be completed/developed. The respondent also undertakes to complete the project by the year 2021 but will give offer of possession to the complainants of their unit by June 2020.
20. It is submitted by the respondent 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. Therefore, according to terms and conditions of builder buyer



agreement clause 2, the complainants are not entitled to any compensation except for compensation for delayed possession as per clause 2 of the said agreement.

21. The respondent submitted that due to some technical reasons and for overall betterment of the project, the unit of the complainants was changed and the agreement for the changed unit was also executed between the parties. The said change was done with the consent of the complainants. The plea of thereat for cancellation is not sustainable in the eyes of law. The complainants themselves executed the agreement without any pressure.

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:



22. With respect to the **first issue**, as per clause 25 of the agreement dated 08.07.2014, the possession was to be handed over in 42 months, i.e. by August 2017+ 6 months grace period, i.e. by 28.02.2018. Accordingly, the respondent failed in handing over the possession on or before the said due date. Thus, the promoter has failed to fulfil his obligation

under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

23. With respect to **second issue**, the complainants have failed to furnish any material particulars in order to establish misrepresentation on the part of the developers for delay in completion of the construction.
24. With respect to **third and fourth issue**, as per the buyer developer agreement dated 08.07.2014, the due date of possession of the unit in question is 28.02.2018. Accordingly, the respondent failed in handing over the possession on or before the said due date. However, the project is registered with the authority vide registration certificate no. 182 of 2017 dated 04.09.2017 wherein the due date of completion of the project is 31.12.2021. Further, as per the reply filed by the respondent, 70% of the construction work at the project is complete and during the proceedings dated 07.03.2019, the counsel for the respondent categorically mentioned that the possession of the apartment shall be given by 30th June, 2020. 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 refund cannot be allowed at this juncture. However, the complainants are



eligible for interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants from the due date of possession till actual possession is handed over or till the revised date as indicated by the respondent.

25. 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 by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligations.

26. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

27. **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 & 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.

28. During the proceedings dated 07.03.2019, the counsel for the respondent stated that the due date of delivery of possession as per the agreement comes out to be 28.02.2018 after allowing six months grace period to the respondent/promoter. It was admitted by the counsel for the respondent that there is delay in delivery of possession by the said due date. The counsel for the respondent categorically mentioned that possession of the apartment shall be given by 30th June, 2020. In case possession is not given by the said date as committed by the respondent, respondent shall be liable for penal proceedings and also shall be liable to refund the entire amount at prescribed rate of interest from the date amount was deposited with the respondent. During the intervening period, the authority is of the considered opinion that the complainants are entitled to delayed possession interest at the prescribed rate of 10.75% per annum for every month of delay in handing over



possession from the due date of possession, i.e. 28.02.2018 till actual possession is handed over or till the revised date indicated by the respondent.

Decision and directions of the authority

29. 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 complainants from due date of possession, i.e. 28.02.2018 till the actual handing over of possession or till the revised date as indicated by the respondent.
- (ii) The respondent is directed to pay the accrued interest till date at the prescribed rate to the complainants within a period of 90 days from the date of this order.
- (iii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10th of every subsequent month.



- (iv) The respondent is directed to adjust the total interest accrued on account of delay in handing over possession towards dues from the complainant, if any.
30. The complaint is disposed of accordingly.
31. The order is pronounced.
32. Case file be consigned to the registry.

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 07.03.2019

Judgement Uploaded on 25.03.2019

