

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 5571 of 2019
Date of decision : 18.10.2021

SHEETAL DHADWAL AND
MOHIT DHADWAL
R/O : Celestia -3003, Lodha
Aurum Grande Kanjur Marg,
Mumbai-400042

Complainants

Versus

M/S SUPERTECH LTD.
ADDRESS : 1114, 11th Floor,
Hemkunt Chamber-89,
Nehru Place, New Delhi-110019

Respondent

APPEARANCE:

For Complainants:

For Respondent:

Mohmad Umar (Advocate)

Bhrihu Dhami (Advocate)

ORDER

1. This is a complaint filed by Sheetal Dhadwal and Mohit Dhadwal (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainants, on 16.04.2012, Mr G. S. Sagar and Mrs. Asha Sagar (original allottee) booked a unit in respondent's project **Araville situated at sector-79**, Gurugram and made payment of Rs 4,00,000 as booking amount. The respondent allotted unit no. D/0902 in Tower D admeasuring 1295 sq. ft for a total consideration of Rs 75,64,698, in favour of said original allottees. A buyer's agreement dated 26.07.2012 was executed between them. Subsequently, complainants jointly purchased ~~the~~ said unit from original allottees vide agreement to sell dated 10.06.2014 and Memorandum of Understanding dated 03.06.2014. A buyer's agreement dated 23.07.2014 was executed between respondent and complainant for a total consideration of Rs 73,21,770 including BSP, PLC, EDC and etc. The respondent issued an addendum to allotment letter dated 15.11.2014, whereby it (respondent) changed the payment plan.



3. As per the Clause E (1) of buyer's agreement, the possession of the said premisses was to be delivered by October 2015 plus further grace period of 6 months. The respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. As per ~~the~~ payment plan opted by the complainants, they made timely payment of Rs 60,37,193/- i.e 80 % of entire agreed consideration along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.
5. The respondent did not give any information with regard to status of construction of the project and continued to delay ~~the~~ delivery of possession of the unit.
6. Contending that the respondent has breached ~~the~~ fundamental term of the contract, by inordinately delaying ~~the~~ delivery of ~~the~~ possession, the booking of the unit was made by the original allottee in the year 2012 and even in 2019, the project is nowhere near completion, the complainants have sought refund of entire amount of Rs 60,37,193 paid by them till now, along with interest @ 18 % per annum.
7. The particulars of the project, in tabular form, as given by complainants are reproduced as under:



S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	"Araville", Sector 79, Gurugram,
2.	Project area	10.00 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	37 of 2011 dated 26.04.2011
5.	Name of licensee	M/S Tirupati Buildplaza Pvt. Ltd.
6.	RERA Registered/ not registered	Not registered
UNIT DETAILS		
1.	Unit no.	D/0902, Tower- D
2.	Unit measuring	1295 sq. ft.
3.	Date of Booking	16.04.2012 (Original Allottee)
4.	Date of Buyer's Agreement	26.07.2012 (Original Allottee)
5.	Date of Buyer's Agreement	23.07.2014 (Complainants)
6.	Clause E (1) of buyer's agreement: the possession of the said premisses was to be delivered by October 2015, with grace period of 6 months.	April 2016



7.	Delay in handing over of possession till date	5 years 06 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 73,21,770
9.	Amount paid by the complainant	Rs 60,37,193
10.	Payment Plan	Special Payment Scheme 60:20:20

11. The respondent contested the complaint by filing a reply dated 25.08.2021, ^{It} and raised ~~the~~ objection with respect to jurisdiction of Authority or Adjudicating Officer for considering relief in respect of refund, ^{starting that} as the issue is still pending adjudication before Supreme Court in **SLP (C) No. 13005 of 2002 titled as M/s Sana Realtors Pvt. Ltd. V Union of India & Ors.**

12. It is further averred that as per buyer's agreement, any delay in offering possession due to force majeure circumstances would be excluded from the possession period. The pandemic of Covid-19 has gripped the entire nation since March 2020 and due to nationwide lockdown no construction could take place and it has become almost impossible to arrange fund as banks and NBFC's have made it difficult to apply for completion of pending projects.

13. The Authority vide its order dated 26.05.2020 has acknowledged Covid-19 as a force majeure event and granted



extension of six months period to on-going projects. Further, Ministry of Housing and Urban Affairs vide notification dated 28.05.2020 allowed an extension of 9 months vis-a vis all licenses, approvals, completion dates which were expiring post 25.03.2020 in light of force majeure nature of covid pandemic. The pandemic being a force majeure condition, automatically extends the timeline of handing over of possession.

14. The tower D in which the unit of complainant is located is complete and occupation certificate has already been applied for the said tower. The probable date of delivery of possession is as maximum by December 2021. The construction of the said tower was delayed on account of non-availability of steel and/or cement or other building materials water etc.

15. Moreover, the time-line stipulated under agreement was only tentative subject to force majeure circumstances. There was shortage of labour in the market due to implementation of social schemes such as National Rural Employment Guarantee Scheme and Jawahar Lal Nehru National Urban Renewal Mission which diverted the labour to the employment guaranteed by the Government under said schemes. Moreover, there had been various force majeure circumstances, which were beyond the control of respondent. Again, acute shortage of labour, water and other raw materials or additional permits, licenses were neither foreseeable nor in control of respondent.



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16. Further, Supreme court vide its order dated 04.11.2019 imposed a ~~blanket~~ stay on all construction activities in Delhi-NCR region. Similar orders were passed during winter period in the preceding years as well, i.e. 2017 -2018 and 2018-2019. Contending all this, respondent prayed for dismissal of complaint.
17. I have heard ~~the~~ learned counsels for parties and perused the record.
18. Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before the Hon'ble Haryana Real Estate Appellate Tribunal in case of **Sameer Mahawar Vs M G Housing Pvt Ltd**. Where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the Rules of 2017. In September 2019 Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was further challenged before the Apex

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Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein the Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana High Court referred above. Said special leave petition is still pending before the Apex Court.

19. When the order of Hon'ble Punjab & Haryana High Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, which amounts restoration of status qua ante i.e. when the complaints seeking refund, compensation and interest were entertained by the Adjudicating Officer. Considering all this, I don't find much substance in plea of respondent alleging that this forum has no jurisdiction to try and entertain complaint in hands.

20. According to complainants, by executing BBA, respondent had agreed to handover possession of unit in question till October 2015. This fact is not disputed during arguments. The order of Hon'ble Supreme Court, banning construction activities as referred above, was for year 2019, stipulated date of delivery of possession had expired much before the date of said order. Moreover, respondent has contended that similar orders were passed in the year 2017-2018 and but respondent has not placed on record copy of any such order of the year 2017 - 2018.



21. As far as demonetization of some currency notes is concerned, same was remotely connected with completion of project. There was no restriction on payment through electronic transfer/e-banking transactions. Most of people in our country have opened bank accounts. Moreover, the demonetization came to force much after the due date of completion of project/unit in question.
22. As regards alleged shortage of labour, water, steel and cement in the market, there is no document placed on record by the respondent, to prove that it was unable to procure water, cement, steel etc in adequate quantity.
23. The shortage of labour, building material or the water required for construction cannot be said to be Acts of God or force majeure circumstances. True, ^{the} pandemic of covid19 gripped entire nation and government of India was constrained to impose lockdown but all this happened on and after 23rd March 2020 i.e. much after lapse of agreed period for handing over possession of unit to complainants.
24. When buyers had made payment of almost 80 % of total sale consideration of unit, same were well within their right to claim possession, as per agreement. A buyer cannot be made to wait indefinitely, for his/her dream unit. It is not claimed on behalf of respondent that it has obtained occupation certificate for the tower in which unit of complainants is situated.



25. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund entire amount paid by complainants i.e. Rs 60,37,193 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A cost of litigation etc Rs 1,00,000 is imposed upon respondent to be paid to complainants.

18.10.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 22.11.2021.