

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

**Complaint no. : 3624 of 2019**

**Date of decision : 21.10.2021**

PIYUSH SAGGI  
R/O : 33 A,  
Neelkanth Apartments,  
46 IP- Extension,  
Pataprganj, Delhi-110092

**Complainant**

Versus

M/S SUPERTECH LIMITED  
ADDRESS: 1114, 11<sup>th</sup> Floor,  
Hemkunt Chamber, 89,  
Nehru Place, New Delhi-110019

**Respondent**

**APPEARANCE:**

For Complainant:

For Respondent:

Sushil Yadav -Advocate

Bhawna Dhama-Advocate

  
A.O.

21-10-21



**ORDER**

1. This is a complaint filed by Piyush Saggi (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainant, on 12.10.2013, he booked a flat in respondent's project **Supertech Hues**, situated at sector-68, Gurugram and made payment of Rs 11,61,108 as booking amount. The respondent allotted a flat to him (complainant) bearing No. R0380W00104, Flat # 0104 admeasuring 1430 sq. ft. for a total consideration of Rs 1,16,11,080 including BSP, PLC, EDC etc. A buyer's agreement was executed on 20.11.2014, in this regard.
3. As per Clause E. 24 of buyer's agreement, possession of said premises was to be delivered by July 2018, with grace period of 6 months. The respondent failed to complete the construction work and consequently to deliver same, till date.
4. The booking of the subject flat was made under subvention scheme. A tripartite agreement dated 20.11.2014 was also executed among complainant, respondent and HDFC Bank. As per the terms of agreement, the respondent was to pay EMI of the loan, till possession of unit is handed over to



complainant. The respondent breached the terms of agreement and stopped paying pre-EMIs to the bank after September 2018.

5. As per the payment plan, he (complainant) made timely payment of Rs 60,12,205 but to his utter dismay, possession of the apartment has not been offered as assured by the respondent. When he visited the site of construction, he noticed that there was no progress and none was present at the site to address his queries.
6. He (complainant) requested respondent either to deliver the possession or refund his amount with interest @ 24 % p.a. but respondent refused to do so.
7. In this way, the respondent has committed gross violation of the provisions of section 18(1) of the Act, and hence he (complainant) is forced to file present complaint, seeking refund of entire amount of Rs 60,13,205, along with prescribed interest on compounded rate, direct respondent to pay pre EMI till date, pay interest charges which complainant is bearing due to no-completion of project, Rs 55,000 as cost of litigation and Rs 5,00,000/- for mental agony.
8. The particulars of the project, in tabular form are reproduced as under:

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S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	" Supertech Hues", Sector 68, Gurugram,
2.	Project area	13.743 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	106 & 107 of 2013 dated 26.12.2013
5.	Name of licensee	Sarv Realtors
6.	RERA Registered/ not registered	Registered
<b>UNIT DETAILS</b>		
1.	Unit no.	R0380W00104, Flat # 0104
2.	Unit measuring	1430 sq. ft.
3.	Date of Booking	12.10.2013
4.	Date of Buyer's Agreement	20.11.2014
5.	Due Date of Delivery of Possession As per Clause No. E. 24 : The possession of said premises is proposed to be delivered within by July 2018 with 6 months grace period	July 2018
6.	Delay in handing over of possession till date	3 years 03 month

*[Handwritten Signature]*

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PAYMENT DETAILS		
7.	Total sale consideration	Rs 1,16,11,080 /-
8.	Amount paid by the complainants	Rs 60,13,205/-
9.	Payment Plan	Construction linked Subvention plan

9. The respondent has contested the complaint by filing a written reply. It is contended that subject project is registered under HRERA vide registration certificate no. 182 of 2017 dated 04.09.2017. In view of the said registration certificate, the respondent undertakes to complete the project on or before 2021.

10. Respondent explains that the completion of the building got delayed due to unavailability of steel ad or cement or other building materials or water supply or electric power and/or slow down strike as well as insufficiency of labour force which is beyond the control of respondent. Further, due to orders passed by Environment Pollution (Prevention and Control) Authority, the construction was stopped for few days due to high rise in Pollution in Delhi/NCR. Due to demonetisation and GST, the speed of work/construction of every real estate sector market has been too slump, which resulted in delay of delivery of possession as well as financial loss.



11. It is further averred that Tower V in which subject unit is situated, could not be constructed due to unavailability of steel and other building materials. The respondent undertook to give offer of possession to the complainant of their unit by June 2021. The respondent is ready to transfer booking of allotment of complainant to the alternative unit, in another tower where construction has almost been completed. The respondent undertook to adjust all dues/delayed charges, pre-EMI paid by complainant at the time of offer of possession.
12. The respondent has filed an affidavit of Rakesh Agarwal stated to be GM project Hues, wherein it has been stated that complainant has made payment of Rs 65,65,517 till date after all adjustments. The issue of jurisdiction has been raised in the said affidavit.
13. I have heard Ld. Counsels for the parties and perused the documents on record.
14. 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 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.

15. 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.

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- 16.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.
- 17.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. Moreover, 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, pandemic of covid19 gripped entire nation and government of India was constrained to impose lockdown but all this happened on and after 23<sup>rd</sup> March 2020 i.e. much after lapse of agreed period for handing over possession of unit to complainant.
- 18.It is admitted position that as per BBA possession of unit in question was to be handed over by July 2018 and till date respondent has not been able to complete the construction work. It is contended on behalf of complainants that they have paid Rs 60,13,205. The respondent in its affidavit has admitted that Rs 65,65,517 has been received by respondent towards the subject unit.



19. When buyer made timely payment towards the allotted unit, same was well within his 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 complainant is situated.
20. Simply to say that respondent has ~~respondent has~~ registration of project from HARERA valid upto 2021, never gives license to it, not to complete said project or units allotted to different buyers, <sup>File 2021,</sup> contrary to contract with those buyers. Same is still bound by terms of buyer's agreement, made about handing over of possession.
21. Complaint in hands is thus, allowed and respondent is directed to refund the amount received from the complainants i.e. Rs 65,65,517 to the latter, within 90 days from today, along with interest @ 9.30% p.a. from the date of each payment till its realisation. . A cost of litigation etc Rs 1,00,000 is imposed upon respondent to be paid to complainant.

File be consigned to the Registry.

21.10.2021

  
(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram