

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

**Complaint no. : 1603 of 2018**  
**First date of hearing: 13.03.2019**  
**Date of decision : 13.03.2019**

1. Mr. Rajiv Kohli
2. Mrs. Sangeeta Kohli  
R/o: B-38, Ashoka Avenue,  
Sainik Farms, New Delhi – 110062

**Complainants**

**Versus**

M/s Supertech Ltd.  
Address: 1114, 11<sup>th</sup> floor, Hemkunt Chamber,  
89, Nehru Place, New Delhi – 110019

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri S.S. Sawhney Advocate for the complainant.  
Shri Shiv Kumar Shukla Representative for the  
respondent  
Shri Rishabh Gupta Advocate for respondent

**ORDER**

1. A complaint dated 20.11.2018 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, Mr. Rajiv Kohli and Mrs. Sangeeta Kohli against the promoter M/s Supertech Ltd., for violation of clause 1 of the buyer's agreement dated



04.09.2014 for not giving possession of the above-mentioned unit.

2. Since the buyer's agreement dated 04.09.2014 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	"Supertech Hues", Sector 68, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	DTCP license no.	106 and 107 of 2013 dated 26.12.2013
4.	Allotted apartment/unit no.	202, 2 <sup>nd</sup> floor, tower-W
5.	RERA Registered / not registered	<b>registered vide no. 182 of 2017</b>
6.	Revised registration date	<b>31.12.2021</b>
7.	Date of execution of buyer's agreement	04.09.2014
8.	Payment plan	Construction linked plan
9.	Total consideration	Rs. 1,04,15,600/-
10.	Total amount paid by the complainant till date	Rs. 27,83,160/-
11.	Due date of delivery of possession Clause 1 – possession shall be given by the developer in 42 months i.e. by April, 2017 with a grace period of 6 months	October, 2017



12.	Delay till date	1 year 4 months (approx.)
13.	Penalty clause	Clause 2 – Rs. 5 per sq. ft' of super area

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 04.09.2014 is available on record for the aforesaid apartment according to which the possession of the said unit was to be delivered to the complainant by October, 2017.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed by the respondent and has been perused by the authority.

#### **Facts of the complaint**

6. Respondent is a real estate developer and have been developing various residential projects in and around NCR region. Respondent approached the complainants in the month of July, 2013 and represented that a project named "Supertech Hues" Sector – 68, in Gurgaon Haryana is being developed by respondent for which requisite license had been applied.



7. Thereafter the respondent represented to the complainants that they had obtained all the requisite approvals and obtained the license no. 106 and 107 of 2013 dated 26.12.2013 from DTCP, Haryana for the said plot of land situated at Sector - 68 and falls under Gurgaon Manesar urban plan 2021.
8. The respondent planned to develop a group housing complex on the said land by constructing thereon multi-storied buildings. The project comprising of 2 BHK + study room, 3BHK + S. toilet, 3BHK + study + S. room having spacious apartments and amenities like convenient shopping, clubhouse with swimming pool, gymnasium, mediation court, basketball and tennis court, nature park jogging track, amphitheatre amongst several others. For the record it is important to note here that currently the date of completion reflected in the respondent website is 31.12.2021, whereas the completion date mentioned in the buyer developer agreement executed between the parties is April, 2017.
9. The representatives of respondent informed and assured the complainants at the time of booking that the construction will commence maximum by the end of December, 2013 and



possession will be handed over within the period of 42 months from the date of payment of booking amount, thus, believing upon the representations and assurances of the respondent, the complainants booked the unit on 24.07.2013 by paying a booking amount of Rs. 7,00,000/- through cheque bearing no. 141836, dated 24.07.2013 drawn in favour of respondent and thus was promised the unit bearing no.702, 7<sup>th</sup> floor in tower - L, in project "Supertech Hues". The said amount was acknowledged and accepted by the respondent and even after continuous demands of the complainants no receipt was issued to them. A receipt was issued only on 24.01.2014 for the said cheque bearing no. 141836, dated 24.07.2013. The complainants made several requests to provide the allotment letter and to execute the buyer's agreement but the respondent was deliberately delaying the same.



10. The complainants asked at the time of booking to provide the allotment letter and to execute the buyer's agreement but the respondent gave false excuses and delayed stating one reason or another. Thereafter, the respondent created an undue pressure to give money as per their demands without

executing buyer's agreement. Further, upon requests of the respondent another cheque bearing no. 083954 amounting to Rs. 4,28,600/- was handed over to the respondent on 21.12.2013 which was duly encashed. It is evident that at that relevant time the complainants had made a payment of substantial amount out of the total consideration for the said flat. Thus, after several requests the respondent provided the booking form on 20.03.2014 i.e approximately 9 months after payment of booking amount. In the said booking form the allotment of the flat was changed from unit bearing no.702, 7<sup>th</sup> floor tower -L to unit bearing no.202, 2<sup>nd</sup> floor tower -W, the said change was also communicated to the complainants vide letter dated 23.06.2014. The said booking form was also contained details of allotment and further the total consideration paid till that date was also acknowledged and the payment plan opted by the complainants was construction linked. It is pertinent to mention here that the booking form with malafide intention mentions the date of booking as 12.10.2013, whereas it is evident from the documents placed on record that the flat was booked way back on 24.07.2013





when the cheque bearing no. 141836, dated 24.07.2013 of Rs. 7,00,000/- was handed over to the respondent no. 1 against which a proper receipt had also been issued. It is important to note here that without executing any buyer developer agreement the respondent raised another demand of Rs. 2,04,548/- the same was also duly paid vide cheque bearing no. 235487, dated 16.06.2014.

11. After repeated request the respondent executed the builder buyer agreement on 04.09.2014 that is almost after passing of more than a year and two months from the date of booking. It is to mention here that on 04.09.2014 the complainants were surprised on realization of the fact that the possession of the unit to be handed over within a period of 42 months from the date of agreement as mentioned in the said buyer's agreement, which was against the terms of the agreed understanding as the representatives of the respondents had assured for handing over the possession within a period of 42 months from the payment of booking amount. The promised date of possession as per the buyer's agreement is April, 2017, the same had lapsed long time back.



12. Thereafter the respondent kept on demanding money from the complainants on false pretexts such as raising the construction at a very fast pace and the complainants with a hope that the possession of the unit will be handed over in some time after completion of construction, continued to pay the same on good faith but all the demands made by the respondent were not as per the level of construction.

13. The total consideration paid till date is Rs. 27,83,160/-. Total BSP only of unit is Rs. 89,66,100/-. It is pertinent to mention that complainants have paid the consideration fulfilling each and every demand of the respondent that have arose from time to time for the unit no. 202, 2<sup>nd</sup> floor ,tower- W. Thus, the complainants have made payments on the demands of the respondents and the same were duly accepted and receipts were provided against the payments made.

14. Since the payment was demanded by the respondent, however no information regarding the progress of the project was provided, thus the complainants personally visited the office of the respondent various times (2013- 2018) to enquire about the progress of the construction and requesting for handing





over the possession of the said unit, however, most of the time the officials refused to meet the complainants and sometimes whenever the complainants were able to meet the officials of the respondent, vague answers were given by the respondent officials that the project will be completed within the fixed time frame. The complainants visited the construction site on various occasions and were shocked to discover that the even foundation of the tower in which the flat of the complainants is situated i.e tower W has not been laid down.

15. As huge time had been lapsed, the complainants therefore made several calls to the customer care and marketing departments to seek status of the construction, but the complainants was never provided with a satisfactory response and the officials of the respondent made false and frivolous statements that the construction is in full swing and the unit shall be handed over within the agreed time. Thereafter the complainants had visited the site in the month of January, 2018 and was shocked to realize that the project was getting delayed as no construction was being carried out. That complainants noticed that external work in the building, the



land scape work and other such developments and facilities are not completed till date. That interestingly till date project is far from completion. The complainants were shocked to discover that the even foundation of the tower in which the flat of the Complainants is situated i.e tower W has not been laid down.

16. The project is not complete till date despite of the fact that the complainants had paid the substantial amount against the flat as per the demands of the respondent for the construction purpose. As, per the payment schedule provided by the respondent under the buyer's agreement. The complainants had already paid the demanded amount which is more than the considered amount as per the agreement. It is quite surprising that till date the notice of possession had not been provided by the respondent, moreover the construction has not been completed yet. The complainants have on various occasions demanded refund of the entire money paid till date alongwith interest @ 18% per annum and appropriate compensation, but all their requests have fallen in deaf years of the officials of the respondents.



17. The buyer's agreement stated that time was the essence of the contract, it was incumbent upon the builder i.e. the respondent to develop and hand over possession of the said flat as per the timelines set out in the buyer's agreement. It is also to mention here that in the clause 24 of buyer's agreement it has been stated that *"The Possession of the Unit be given in 42 month i.e by April, 2017 or extended period as permitted by the agreement....."*
18. It is pertinent to note here that till date the project is nowhere near completion stage and thus, the Complainants are liable for refund of complete amount duly paid alongwith interest.
19. Hence, it is averment from the above that the respondent is also liable to compensate because the time frame of handing over the possession has been lapsed.
20. Almost a period of 62 months has been lapsed from the date of booking of the unit and further a period of almost 49 months have gone since the agreement was executed between the complainants and the respondent. Despite passing of huge time the respondent had deliberately failed to handover the possession of the unit to the complainants and the project is



also at nascent stage, this fact is evident from the information available at the website of the respondent which shows the completion date as 31.12.2021.

21. As per section 18 of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to return the amount and pay compensation to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms of the agreement of the sale.
22. In addition to the abovementioned provision, the respondent is also bound by the Haryana Real Estate Regulation rules, 2017 which lists the interest to be computed while calculating compensation to be given by a promoter to an allottee in case of a default.
23. As per clause 19(4) of the Real Estate (Regulation and Development) Act, (RERA), 2016 the allottee is entitled to claim for compensation with interest in the event that the project is delayed.
24. The complainants aver that in view of the principle of the parity and abovementioned facts the respondent is liable to



refund the amount along with interest and compensation as prescribed under the Act. They are also liable to pay pendent lite interest and further interest till date of actual payment.

## 25. Issues to be determined

- I. Whether the respondent has breached the terms and conditions as agreed by it under flat buyer's agreement dated 04th September 2014?
- II. Whether failing to deliver timely possession of the unit is material breach of promoter's obligations under the agreement and the Real Estate Regulatory Authority Act?
- III. Whether the respondent has repeatedly misrepresented to the complainants regarding the timeframe of delivery of the unit as well as the status of the project/ unit?
- IV. Whether the respondent is liable to refund the entire amount of Rs. 27,83,160/- to the complainants along with interest as prescribed?



## 26. Reliefs sought

- I. Direct the respondent to refund the entire amount of Rs. 27,83,160/- to the complainants along with interest as prescribed under the Real Estate Regulatory Authority Act, Haryana Real Estate (Regulation and Development) rules, 2017 and other relevant rules/ regulations framed thereunder on the aforementioned sum paid by the complainants to the respondent from the date of such payment and till the date of realization of such amounts.
- II. Direct the respondent to pay to the complainants compensation for the loss caused to the complainants on account of respondent's misrepresentation and deficiency of service.
- III. Any other relief that this hon'ble tribunal deems fit in the facts and circumstances.

## Respondent's reply

27. The complaint is not liable and is filed on false grounds. The complaint has not come with clean hands before this authority and have suppressed material facts.
28. It is submitted that the project is registered under HRERA vide certificate no. 182 of 2017 dated 04.09.2017 to 31.12.2021.





The possession of the said premises was proposed to be delivered by April 2017 with 6 months grace period which comes out to October, 2017. 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. Moreover, due to the orders passed by Environmental Pollution (Prevention and Control) Authority, the construction was stopped for few days due to high rise in pollution in Delhi NCR.

29. It is also submitted that due to stagnation, fall in real estate market, demonetisation and GST, the speed of work has slowed which has resulted in delay of delivery of possession as well as financial loss.

30. It is also submitted that the 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 estate sector. Thus, the plea of refund claimed by every allottee is not sustainable in the eye of law.



### Determination of Issues

31. With respect to the **first, second and fourth issue**, the authority came across clause 1 of the buyer's agreement which is reproduced hereunder:

*"Clause 1 – possession shall be given by the developer in 42 months i.e. by April, 2017 with a grace period of 6 months"*

Therefore, the due date of possession comes out to be October, 2017 and the possession has been delayed by 1 year 4 months approx. till date. The project is registered with the authority and the revised date for completion of project as per the registration certificate is 31.12.2021. Therefore, the complainant cannot get refund at this point of time but is entitled to get delay compensation from the date of payment till the possession is offered. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.



32. With respect to the **third issue**, the complainant have made averments without substantiating the same in material particulars.

### **Findings of the authority**

33. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to 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 complainant at a later stage.

34. As the possession of the apartment was to be delivered by October, 2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

35. 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 obligations.

36. In the present complaint, the complainant is seeking refund of the entire money paid till date i.e. 27,83,160/- along with interest from the date of provisional allotment till its realization of the payment and cancel the allotment upon entire refund.

37. However, as per RERA registration certificate the respondent has committed to provide possession by 31.12.2021. Therefore, the respondent shall handover possession of the said unit latest by the said date.

38. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

**Decision and directions of the authority -**

39. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:-



- (i) Complainant is insisting for refund of the deposited amount which is not feasible as per provisions of law at this moment as there will be irreparable damage to whole project.
- (ii) As per clause 1 of the builder buyer agreement dated 4.9.2014 for unit no. 202, tower-W, in project "Supertech Hues", Sector-68, Gurugram, possession was to be handed over to the complainant within a period of 42 months + 6 months grace period which comes out to be 4.9.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.27,83,160/- to the respondent against a total sale consideration of Rs.1,04,15,600/. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 4.9.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.
- (iii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till



offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

40. The compliant stands disposed of.

41. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.03.2019

Judgement Uploaded on 28.03.2019

**(Subhash Chander Kush)**

Member

Haryana Real Estate Regulatory Authority, Gurugram



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