

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

Complaint no: 2255 of
2018
First date of hearing 08.02.2019
Date of decision : 12.03.2019

Mr. P.R Bishnoi
R/o H.no.-1421, Sector-46, Gurugram 122003

Complainant

Versus

Supertech Limited
Regd. Office: 114, 11th Floor, Hemkunt
Chamber- 89, Nehru Place, New Delhi -
110019.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri P.R Bishnoi Complainant in person
Shri Venket Rao Advocate for the complainant
Shri Rishabh Gupta Advocate for the respondent

ORDER

1. A complaint dated 14.12.2018 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 complainant Mr. P.R Bishnoi, against the promoter M/s. Supertech Limited, on account of violation of clause 21 of the flat buyer's agreement dated 22.11.2012 for unit no. R032B01203, 12th floor in the project 'Araville' located at Sector 79, Gurugram, Haryana for not delivering the possession of the said flat by due date i.e. by August, 2016 which is in violation of obligation of promoter under section 11(4)(a) of the Act.

2. Since the flat buyer's agreement was executed on 22.11.2012 prior to the commencement of the Real Estate (Regulation and Development) Act, 2016 so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Araville", Sector 79, Gurugram, Haryana.
2.	Nature of real estate project	Group housing project
3.	Project area	10.00 acres

4.	RERA registered/ unregistered	Registered vide no. GGM/16/2018/dated 13.10.2018
5.	Registration valid up to	31.12.2019
6.	Occupation certificate	18.12.2018
7.	DTCP license	37 of 2011 dated 26.04.2011
8.	Date of booking	04.09.2012
9.	Allotted unit no.	R032B01203, 12 th floor
10.	Unit measuring	1945 sq. ft.
11.	Date of execution of flat buyer's agreement	22.11.2012
12.	Total consideration	Rs. 1,10,43,000/- (Pg-4 of buyer agreement)
13.	Total amount paid by the complainant as per customer statement	Rs. 91,54,203/-
14.	Payment plan	Construction linked payment plan
15.	Date of delivery of possession. Clause 21 of the said agreement dated 22.11.2012 August, 2015 + 6 months' grace period	February, 2016
16.	Period of delay in delivery of possession till date of decision	3 years 12 days
17.	Penalty clause as per flat buyer's agreement	Clause 23 of the said agreement i.e. – Rs. 5/- per sq. ft. per month for first 6 months, Rs. 7.50/- sq. ft. per month for next 6

		months and finally it shall be Rs. 10/- sq.ft. per month thereafter
18.	Proposed date for delivery of possession as per RERA registration certificate	31.12.2019

4. The details provided above, have been checked as per record available in the case file. A flat buyer's agreement dated 22.11.2012 is available on record for unit no. R032B01203, 12th floor, Araville project located at Sector 79, Gurugram, according to which the possession of the aforesaid unit was to be delivered by the respondent by February, 2016, but the respondent has failed to fulfil its commitment and has violated clause 21 of the flat buyer's agreement dated 22.11.2012. The respondent has failed to deliver the possession till date. Therefore, the promoter has not fulfilled his obligation which is in violation of section 11(4)(a) of the Act *ibid*.
5. 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 08.02.2019 and 12.03.2019. The reply has been filed on behalf of the respondent on 22.02.2019

Facts of the complaint: -

6. Briefly facts relevant for the disposal of the present complaint are that on 04.09.2012, the respondent through their marketing representatives approached the complainant and invited him to purchase a unit in their project namely "Araville". It was represented that the project is one of the finest and that the said unit is free from all kinds of encumbrances. The complainant relying on such representations, brochures, assurances and meetings, agreed to purchase one unit admeasuring super area 1975 sq. ft. for an agreed sale consideration of Rs. 1,10,43,000/- and paid an amount of Rs. 8,00,000/- as an advance payment for registration on 30.08.2012. **(Note : wrongly mentioned by the complainant. As per allotment letter dated 20.11.2011, 1945 sq.ft was assigned to the complainant)**
7. The complainant submitted that he was provisionally allotted a unit bearing no. B-1203 of the project vide allotment letter dated 20.11.2012.

8. The complainant submitted that on 22.11.2012, a flat buyer's agreement was executed between the complainant and the respondent. As per the flat buyer's agreement, the possession of the said unit was to be delivered by August, 2015. It is pertinent to note that there are no definite timelines defined for the builder to start the construction or for that matter, complete the project. However, it was assured by the respondent that the project will be completed by August 2015. As per clause 21 of the agreement, the respondent had to hand over the possession of the unit by August 2015. Clause 21 of the flat buyer's agreement is reproduced below:

"The possession of the allotted unit shall be given to the allottee(s) by the company by August 2015, however, this period may be extended due to unforeseen circumstances for a further grace period of 6 months to cover any unforeseen circumstances. The possession period clause is subject to timely payment by the allottee(s) and the allottee(s) agrees to abide by the same in this regard".

However, the respondent assured that the project will be completed by August 2015, but the respondent failed to hand over the possession of the unit to the complainant within time.

9. The complainant submitted that he received a letter dated 20.10.2015 sent by the respondent, extending the due date of

possession to 30.09.2016. The complainant received a letter dated 12.06.2018 from the respondent, to complete pre-possession formalities and pay the remaining amount due towards the agreed sale consideration. It is further submitted that he sent a letter dated 14.09.2018 to the respondent requesting to provide the occupancy certificate for the said unit. The complainant further replying to respondent letter dated 12.06.2018 through letter dated 15.10.2018, raised objection on respondent's issuing demand for pre-possession of the unit when the construction has yet not been completed and also claimed interest on delay in handing over the possession.

10. The complainant submitted that he had always paid all the instalments on time as per payment schedule whenever demands were raised by the respondent. The complainant had paid a huge amount of Rs. 91,54,203/- i.e. 82 % of the sale consideration, till 21.01.2016, against the demands raised by the respondent from time to time according to payment schedule of the unit.

11. The complainant submitted that the respondent even after receiving almost entire sale consideration of the unit, failed to handover the possession of the said unit within stipulated time period. The complainant requested the respondent many times over phone, visited the office and by meeting them personally to inform them the status of the project and also the probable time of handing over the possession or seeking refund. However, respondent did not give any heed to the request of the complainant nor gave a satisfactory reply.
12. It is pertinent to mention that the Respondent have utterly failed in fulfilling their obligation of delivery of the unit as per the buyer agreement and failed to refund the amounts paid by the complainant along with interest in terms of section 18 of the Real Estate (Regulation and Development)Act 2016 read with Haryana Real Estate (Regulation and Development) Rules, 2017.

Issues raised by the complainant: -

- i. Whether the respondent has failed to hand over the possession in stipulated time under the said agreement

- and/or failed to fulfil their obligation under section 18 of the Act?
- ii. Whether the respondent has failed to refund the amounts paid by the complainant along with the prescribed interest, thereby violating section 18 of the Act?
- iii. Whether the respondent is required to register the phase/project “ARAVILLE”, at sector-79, Gurugram in terms of section 3 of the Real Estate (Regulation and Development) Act,2016?

Reliefs sought by the complainant: -

The complainant is seeking refund of the entire amount paid by the complainant along with interest from the date of respective deposits till its actual realisation.

Reply by the respondent

13. The respondent submitted that the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds and it is pertinent to mention here that the project “Supertech ARAVILLE” is

registered before this hon'ble authority. The registration no. is 16 of 13.10.2018 which is valid upto December 2019.

14. The respondent submitted that the possession of the said unit was proposed to be delivered by the respondent to the apartment allottee by August 2015 with an extended grace period of 6 month as agreed by the parties to the agreement which comes to March 2016. 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, aforementioned, the respondent shall be entitled to a reasonable extension of time for delivery of possession of the said premise as per terms of the agreement executed by the complainant and respondent. There is no malafide intention of the respondent to get the delivery of project delayed. It is also pertinent to mention here that due to orders passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for few days due to high rise in pollution in Delhi NCR.

15. It is also submitted by the respondent that due to stagnation, sluggishness, down fall in real estate market, due to demonetization 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 and let the promoter suffer for all aforesaid circumstances.

16. The respondent submitted that the said project is a continuance business of the respondent and it will be completed by the year December 2019. The current status of the tower- B is that it is almost completed. Occupation certificate of the said tower has also been received. The copy of occupation certificate as well as the photographs of the current status of the tower are attached herewith as **Annexure R2 and R3**. No refund at this stage can be made to the complainant when tower is completed/ developed.

Determination of issues:-

17. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, and the authority decides the issues raised as under:

- i. Regarding the **first, second and third issues** raised by the complainant, it has been found from the perusal of records that as per clause 21 of the flat buyer's agreement dated 22.11.2012, the respondent was under contractual obligation to deliver the possession of the said unit by August, 2015 plus grace period of 6 months' thereof. The relevant clause is reproduced as under:

"The possession of the allotted unit shall be given to the allottee by the company by August 2015, however, this period can be extended due to unforeseen circumstances for a further grace period of 6 months to cover unforeseen circumstances."

Grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond the control of the respondent. Hence, the due date of delivery of possession was February, 2016 and the respondent has failed to deliver the possession of the unit till date. Hence, that there is a delay of approximate three

years on the part of the respondent in delivering the possession. As far as the refund is concerned it is noted that the phase in which the unit allotted to the complainant lies is registered by the interim HRERA, Panchkula vide registration no. GGM /16 /2018 dated 13.10.2018 and as per the registration certificate the respondent has mentioned to deliver the possession by 31.12.2019. Also the respondent has obtained OC in respect of tower in question from the concerned authority on 18.12.2018. Thus, refund cannot be granted. However, the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% as per the provision of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Findings of the authority: -

18. 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. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

Decisions and directions of the authority :-

19. 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 issues the following directions to the parties in the interest of justice: -
 - i. The respondent is directed to pay interest at the prescribed rate i.e. 10.75% p.a. for every month of delay from due date of possession i.e. 01.02.2016 till offer of possession.

- ii. The interest so accrued from due date of delivery of possession (01.03.2016) till the date of order 20.03.2019 be paid within 90 days from the date of order.
 - iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.
 - iv. The complainant is directed to take over the possession within a period of one month from the date of offer of possession after clearing all the dues to the respondent
20. Complainant stands disposed of.
21. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.03.2019

Judgement uploaded on 08.04.2019