

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

Complaint no. : 732 of 2018
First date of hearing : 12.02.2018
Date of decision : 15.03.2019

1. Ms. Renuka Sharma,
 2. Mr. Devender Sharma
- Both R/o Flat no.1501, tower no.14, The
Close North, Nirvana Country, Sector 50,
Gurugram, Haryana.

Complainants

Versus

1. M/s Supertech Ltd.
(through its chairman, Ram Kishore Arora)
2. Sangeeta Arora
(joint managing director)
3. Mohit Arora
(Managing director)

Regd. office: 1114, 11th Floor, Hemkunt
Chambers 89, Nehru Place, New Delhi-110019.

4. M/s Tirupati Buildplaza Pvt. Ltd.
(through Sandeep Gupta)
Regd. office: Ch. no. 1517, 15th floor, Devika
Tower 6 Nehru Place, New Delhi-110019.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Rishi Raj Yadav Advocate for the complainants
Shri Rishab Gupta along with Advocates for the respondents
Shri Satish Sharma

ORDER

1. A complaint dated 20.08.2018 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 Ms. Renuka Sharma and Mr. Devender Sharma, against the promoter M/s Supertech Ltd. and others, on account of violation of the clause E.1 of the flat buyer's agreement dated 28.05.2013 in respect of flat described below in the project 'Araville' for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.
2. Since, the flat buyer's agreement has been executed on 28.05.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the 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 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 case are as under:

1.	Name and location of the project	"Araville", Sector 79, Gurugram, Haryana
2.	Nature of the project	Group housing project
3.	Project area	10.0 acres

4.	DTCP license no.	37 of 2011 dated 26.04.2011
5.	License holder	M/s Tirupati Buildplaza Pvt. Ltd.
6.	RERA Registered/ not registered.	Registered
7.	HRERA registration number	16 of 2018
8.	HRERA registration certificate valid upto	31.12.2019
9.	Flat/unit no.	A-1204, 12 th floor
10.	Flat measuring	2215 sq. ft.
11.	Date of booking	11.05.2013
12.	Date of execution of flat buyer's agreement-	28.05.2013 [page 25 of complaint]
13.	Payment plan	Possession linked payment plan
14.	Total sale price of the unit as per the said agreement	Rs.1,55,22,000/-
15.	Total amount paid by the complainants till date as alleged by the complainants.	Rs.49,55,072/-
16.	Due date of delivery of possession as per clause E.1 of flat buyer's agreement (June 2016 + 6 months grace period)	31.12.2016
17.	Delay in handing over possession till date of decision	2 years 2 month 15 days
18.	Penalty clause as per the said flat buyer's agreement	Clause E.3 of the agreement i.e. The penalty for the first six months post grace period shall be Rs.5/- per sq. ft. per month. Similarly, the penalty shall be Rs.7.50/- sq. ft. per month for the next six months and finally it shall be Rs.10/- sq. ft. per month thereafter.

4. Details provided above have been checked on the basis of record available in the case file which has been provided by

the complainants and the respondents. A flat buyer's agreement dated 28.05.2013 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 31.12.2016. Neither the respondents have delivered the possession of the said unit till date to the complainants nor they have paid any compensation as per clause E.3 of flat buyer's agreement duly executed between the parties. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents through its counsel appeared on 12.02.2019. The case came up for hearing on 12.02.2019 and 15.03.2019. The reply filed on behalf of the respondents has been perused.

Facts of the complaint

6. Briefly stated, the facts of the complaint are that the complainants are related to each other as husband and wife and are allottees within the definition of 'allottee' in the Act *ibid*. Thus, the complainants are entitled invoke the jurisdiction of this honourable authority under the said Act.
7. The complainants submitted that the respondent company claimed itself to be pioneer in the business of development of

various residential and commercial flats in different cities of India and published advertisements to develop a project by name 'Araville' in Sector 79, Gurugram, Haryana. The respondent no.1 to 4 are the persons involved and responsible for the day to day operations and business of respondent company.

8. The complainants submitted that they made their mind to purchase 3BHK residential flat in the said project of the respondents and therefore booked a flat in the said project of the respondents. Initially a cheque amounting to Rs.7,50,00/- was handed over to the employee of the respondents. The complainants jointly booked a unit no. A1204 measuring 2215 sq. ft. @ Rs.6,200/- per sq. ft. and total amount alongwith PLC, IFMS, etc. was estimated Rs.1,55,22,000/- for the above said unit and a flat buyer's agreement dated 28.05.2013 was signed. Even after receiving a substantial amount of Rs.49,55,072/- from the complainants, the respondents did not give any allotment letter to the complainants for the said flat till date.

9. The complainants submitted that in the month of December 2013, they visited the site and found that no construction was going on and on asking from the respondent no.1 and 4 and visiting the office of R.P Singh, authorized dealer/ agent of

respondents, they assured that they will start the construction very soon and the project would be delivered on time. Thus, the complainants visited the site many times during the period, but the construction work was found stopped or in slow process.

10. The complainants submitted that after passing of three years i.e. by June 2016, construction work could not be completed, and complainants contacted the respondent telephonically and also met personally in every three/four months. Also, the complainants made demand of the flat and penalty amount Rs.5 per sq. ft. as per clause 3 of column 'possession of the unit of flat' or refund of the amount with interest but respondents assured the complainants that they would deliver the flat to the complainants in their other projects and again induced the complainants on this pretext. But till date the respondents have not handover the possession of flat or did not made the penalty amount nor refund of the consideration amount paid by the complainants.

11. The complainants submitted that they have also taken some photographs of the work done at project site on 29.07.2018 and the same are annexed with the casefile. The respondents have misappropriated the huge amount received from the complainants and simultaneously the complainants also have

to bear burden of paying monthly rent for residential house at the tune of Rs.50,000/- per month in the year 2016 and 2017 and at the tune of Rs.55,000/- in the year 2018 and would have to bear Rs.60,000/- for the year 2019. Thus, complainants have been suffering from a great mental, physical and monetary agony. Therefore, complainants are also entitled to get refund of their afore-mentioned amount of Rs.49,55,072/- along with interest at from the date of payment of consideration of amount for the flat till the date of actual realization.

12. The complainants submitted that cause of action arose in their favor and against the respondent when the respondents received the money in the year 2013. It further arose when the respondents failed to deliver the possession of the residential unit to the complainants within the promised period of 3 years from the date of booking. The cause of action further arose against the respondent when they did not refund the money so paid by the complainants and is still continuing as the money paid by the complainants are still lying with the respondents and the respondents also did not pay penalty amount as per terms and conditions of the agreement. Thus, the present complaint is well within the prescribed period of limitation.

Issues to be decided

13. The complainants have raised the following issues:

- i. Whether the respondents completed the construction of the flat within 36 months i.e. June 2016, from the date of booking and the complainants are entitled to refund of the money paid by them to the respondents along with interest at the prescribed rate?
- ii. Whether the respondents have paid penalty @ Rs.5/- per month on the super area i.e. 2215 sq. ft. for delay in handing over possession?
- iii. Whether the respondents are liable to be prosecuted for delay in registration of the project under the Act ibid?

14. **Reliefs sought:**

The complainants are seeking refund the amount paid i.e. Rs.49,55,072/- by them along with interest at the prescribed rate from the date of respective payments made to the respondents till realisation.

Reply on behalf of respondent no.1

15. The respondent submitted that the complaint filed by the complainants is not maintainable in the present form and is filed on false and frivolous grounds.

16. The respondent submitted that the project 'Araville' is registered before this hon'ble authority. The registration no. is 16 of 2018 dated 13.10.2018 which is valid upto December 2019.
17. The respondent submitted that the possession of the said unit is proposed to be delivered by the respondent to the allottee by October 2016 with an extended grace period of 6 months as agreed by the parties to the agreement which comes out to April 2017. The completion of the building has been delayed by reason of non-availability of steel and/or cement or other building materials and/or water supply or electric power, 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 the terms of agreement.
18. The respondent has further submitted that due to stagnation, sluggishness, down fall in real estate market, demonetisation as well as coming into force of GST, the speed of work/construction of every real estate market has been too slump which results in delay in 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 eyes of law.

19. The respondent has submitted that the said project is a continuous business of the respondent and it will be completed by the year 2019. The current status of the tower A is that it is almost completed. The respondent is expected to provide possession of tower A by December 2019. The respondent undertakes to give possession by December 2019.
20. The respondent submitted that the complainants are in arrears of instalments on completion of superstructure of tower A amounting to Rs.51,52,309/-.

Reply on behalf of respondent no.4

21. The respondent submitted that answering respondent have no privity of contract with the complainants. The answering respondent never gave promise, assurance and any commitment regarding the completion of the development work and handing over the possession of the flat in question to the complainants.
22. The respondent submitted that as per paragraph no. 3 [i to iii], para 9 and para 10 of collaboration agreement dated 27.01.2012, executed between the answering respondent with respondent no.1, the construction work and the development of the project in all manners, is responsibility of respondent no.1. So, the answering respondent require to be dropped

from the present proceedings at this stage only and no liability can be legally fastened with the answering respondents.

23. The respondent denied that any assurance and deadline of the possession was ever given by the answering respondent. The complainants never met with the answering respondents in this regard. The answering respondent is not linked with and not having the responsibility of the development, completion of the project and handing over the possession, as per the collaboration agreement dated 27.03.2012. The flat buyer's agreement dated 28.05.2013 is not executed by the answering respondents. Thus, no liability can be assigned to the answering respondents regarding completion of the project in any manner. The answering respondents never requested the complainants for the payment, as alleged.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings of the authority are as under:

24. With respect to the **first issue** raised by the complainants, the authority is of the view that the respondent has delayed the delivery of possession of the booked unit. This is fortified from the fact that as per clause E.1 of the said agreement dated

28.05.2013, the construction was to be completed by June 2016 with a grace period of six months. The relevant clause is reproduced as under:

“E. Possession of unit

The possession of the allotted unit shall be given to the allottee by the company by June 2016. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months to cover any unforeseen circumstances...”

25. Accordingly, the due date of possession comes out to be 31.12.2016 and the possession has been delayed by 2 years 2 months and 15 days from due date of possession till the date of decision. Therefore, the respondent has breached the said agreement by not delivering the possession of the said unit by the due date. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it will hamper the completion of the project as the project is almost complete and the respondent has committed to deliver the project by 31.12.2019 as per the HA-RERA registration certificate. Therefore, the refund of the deposited amount cannot be allowed. However, as the promoter has failed to fulfil its obligation under section 11(4)(a) of the Act *ibid*, the promoter is liable under section 18(1) proviso read with rule 15 of the Rules *ibid*, to pay interest to the

complainants, at the prescribed rate, for every month of delay till the handing over of possession.

26. With respect to the **second issue** raised by the complainants, the delay compensation payable by the respondent as per clause E.3 of the flat buyer's agreement i.e. for first six months post grace period shall be Rs.5/- sq. ft. per months. Similarly, the penalty shall be Rs.7.50 sq. ft. per month for the next six months and finally it shall be Rs.10/- sq. ft. per month thereafter, is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been observed in **para 181 of Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

27. Thus, the authority is of the considered opinion to grant interest at the prescribed rate as determined aforesaid.

28. With respect to the **third issue** raised by the complainants, the project in question 'Araville' is registered vide registration no.

16 of 2018 dated 13.10.2018 after following the due procedure under the Act *ibid*.

Findings of the authority

29. 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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.

30. An amendment to the complaint was filed by the complainants along with the complaint wherein they have stated that they are not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserves their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. An

application dated 05.02.2019 was filed by the respondent M/s Supertech Ltd., praying to delete the names of chairman and respondent no.2 and 3 from the complaint on the ground that they cannot be deemed to be in charge of and responsible to the company for conduct of its business. The said application is hereby allowed as there is no specific allegation in the complaint against the director and respondent no. 2 and 3.

31. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid*. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
32. The project is registered with the authority. By virtue of this complaint, complainants are seeking directions from the authority to direct the respondent to refund the amount deposited with the respondent in lieu of booking of flat/unit alongwith interest. Brief facts leading to this complaint are that the complainants have booked a unit A-1204, 12th floor in project Aravillee, Sector 79, Gurugram and the flat buyer's agreement dated 28.05.2013 to this effect was executed inter-se the parties. As per clause E.1 of the said agreement, the respondent was duty bound to deliver the booked unit to the

complainants by June 2016 + six months grace period which comes out to be 31.12.2016 but till date no allotment has been offered to the complainants. As per registration certificate, the respondent has given the revised date of offer of possession to the complainants by 31.12.2019.

33. Considering all the facts and circumstances of the matter and hearing the parties at length, the authority is of the considered view that in the present circumstances, complainants are entitled for delayed possession charges at the prescribed rate of interest @ 10.75% p.a. till the offer of possession under the provisions of section 18(1) of Haryana Real Estate (Regulation and Development) Act, 2016.

Decision and directions of the authority

34. After taking into consideration all the material facts adduced by both 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:

- (i) The respondent is directed to handover the possession of the said unit by 31.12.2019 as committed by the respondent is the registration certificate.

- (ii) The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum w.e.f. December 2016 till offer of possession for every month of delay on the amount paid by the complainants.
- (iii) The respondent is directed to pay interest accrued from 31.12.2016 to 15.03.2019 i.e. date of decision on account of delay in handing over of possession to the complainants within 90 days from the date of order.
- (iv) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10th of each subsequent month.
- (v) The respondent is at liberty to adjust the payment of delayed charges with the payments due from the complainants.

35. The order is pronounced.

36. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2019

Judgment Uploaded on 10.04.2019