

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

Complaint no. : 2024 of 2018
Date of first hearing : 26.03.2019
Date of decision : 26.03.2019

Mr. Utpal Mishra
R/o house no. A6/504, Tulip White,
Badshapur road, Sector 69, Gurugram

Complainant

Versus

M/s Supertech Ltd.
Regd. Office at: 1114, 11th Floor, Hemkunt
Chamber, 89, Nehru Place,
New Delhi-110019

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Varun Chugh Advocate for the complainant
Shri Rishabh Gupta Advocate for the respondent



ORDER

1. A complaint dated 03.12.2018 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 complainant Mr. Utpal

Mishra, against the promoter M/s Supertech Ltd., on account of violation of the flat buyer's agreement dated 25.07.2012 in respect of apartment described below in the project 'ARAVILLE' for not handing over possession by the due date which is an obligation of the promoters under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 25.07.2012 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 statutory obligations 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 are as under: -

1.	Name and location of the project	"Araville", Sector 79, Gurugram
2.	Project area	10 acres
3.	Unit no.	1501, 15 th floor, tower E
4.	Unit area	1295 sq. ft.
5.	Date of booking	10.05.2012



6.	Registered/ not registered	Registered (GGM/16/2018)
7.	Revised date of handing over possession as per RERA registration certificate	31.12.2019
8.	Nature of real estate project	Group housing project
9.	DTCP license	37 of 2011 dated 26.04.2011
10.	Status of project	The current status of the tower- E is that it is almost completed
11.	Date of flat buyer's agreement	25.07.2012
12.	Payment plan	construction linked payment plan
13.	Total consideration amount	Rs. 75,64,698/-
14.	Total amount paid by the complainant	Rs.60,37,193/-
15.	Due date of delivery of possession as per clause 22 of the flat buyer's agreement November, 2014 plus 6 months grace period	May, 2015
16.	Delay in delivery of possession	3 years, 9 months and 26 days
17.	Penalty clause as per flat buyer's agreement	Clause 24 i.e. Rs.5.00/- per sq. ft of super area of unit per month for the period of delay

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A flat buyer's agreement dated 25.07.2012 is available on record for unit no. 1501, 15th floor, tower E, according to which the



possession of the aforesaid unit was to be delivered by May, 2015. Thus, the respondent has failed to fulfil its contractual obligations and has violated 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 26.03.2019. The respondent through his counsel appear on 26.03.2019. The reply has been filed by the respondent and the same has been perused by the authority.

Facts of the complaint

6. The complainant submitted that he booked an apartment no. RO 32-E01501 in the group housing colony of the respondent known as "SUPERTECH ARAVILLE" (the "project") situated at Sector-79, Gurugram, Haryana.
7. The representatives of the promoter/respondent made utterly false representations and thereby induced the complainant to book an apartment/flat in the ("SUPERTECH ARAVILLE") project in question by showcasing a fancy brochure which depicted that the project will be developed



and constructed as state of the art and one of its kinds with all modern amenities and facilities.

8. The representatives of the respondent/ promoter represented to the complainant that the project in question shall be constructed, developed and designed by a team of ace architects and structural designers to meet world class infrastructure quality and standards. The complainant was induced by the representations of the respondent/promoter and thereby applied for booking of the allotment of the apartment no. RO 32-E01501 having super area 1295 sq. ft. located on floor 15 in tower E (the “apartment/flat”) alongwith one car parking space in the group housing colony known as “SUPERTECH ARAVILLE” (the “project”) situated at Sector-79, Gurugram, Haryana. Moreover, the schedule of payment issued by the respondent no.1, wherein the date of booking, including registration no.; apartment booked by the complainant; payment plan was clearly mentioned.

9. The complainant was induced to make the payment of Rs.6,14,908/- towards booking of the said apartment. It is pertinent to mention here that the complainant had availed a



bank loan regarding the property in question, from Central Bank of India, which had sanctioned a loan amount of Rs 52 Lacs, in favour of the complainant. Till date, the complainant had made a total payment of Rs 60,37, 193/- i.e. a sum of Rs 23,98,141/-, from his own sources, through cheques, and the remaining sum of Rs 36,39,051/- was disbursed by the bank.

10. The complainant submitted that he was further induced to sign pre-printed flat buyer's agreement dated 25.07.2012 by virtue of which the respondent allotted apartment no. RO 32-E01501 having super area 1295 sq. ft. located on floor 15 in tower E along-with one car parking space in the group housing colony known as "SUPERTECH ARAVILLE" situated at Sector-79, Gurugram, Haryana.

11. The said flat buyer agreement is totally one sided which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs 5/- per sq. ft, on the super area of the flat, on monthly basis.



12. The flat buyer agreement dated 25.07.2012 was executed between the respondent and the complainant and as per the said agreement, the respondent is the owner of project land and also obtained licence no.37 of 2011 dated 26.04.2011 for using the said land for the construction and development of the group housing colony and the respondent is developer of the said project.

13. The complainant submitted that the respondent had also induced the complainant that the possession of the said apartment would be handed over to the complainant by November 2014, with a grace period of another 6 months. The complainant was further influenced by the respondent to sign addendum to flat buyer's agreement dated 27.10.2014. As per the said addendum, the special payment plan was introduced by the respondent wherein the complainant was required to pay the total consideration in three tranches i.e. 60% on immediate basis, 20% on or before August, 2015 and 20% at the time of possession, which was duly agreed to by the complainant and hence the payment was made accordingly.



14. The complainant submitted that he also visited at the site and observed that there are serious quality issues with respect to the construction carried out by respondent. The apartments/flats were sold by representing that the same will be luxurious apartment however, all such representations seem to have been made in order to lure complainant to purchase the flats at extremely high prices. The respondent has compromised with levels of quality and are guilty of mis-selling. There are various deviations from the initial representations. The respondents marketed luxury high end apartments, but, they have compromised even with the basic features, designs and quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low grade defective and despicable construction quality.



15. The complainant submitted that respondent has sold the project stating that it will be next landmark in luxury housing and will redefine the meaning of luxury but the respondent has converted the project into a concrete jungle.

16. The complainant submitted that respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 42 months. The complainant was made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far.
17. The complainant submitted that the respondent had promised to complete the project by November 2014, with a further grace period of six months. The flat buyer's agreement was executed on 25.07.2012 and till date the construction is not complete, which is resulting in extreme kind of mental distress, pain and agony to the complainant.
18. The complainant submitted that respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The complainant submitted that, the project is not nearing completion and the complainant has lost faith in respondent who has taken the complainant and other home buyers for a ride by not completing the project.



19. The complainant submitted that respondent has not acknowledged the requests of the complainant in regard to the status of the project. There are no signs of completion of the project. The complainant was made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far.
20. Moreover, the respondent has lackadaisical approach in development of the project as also non-compliance with applicable rules and regulations is evinced from the fact that the licence of the said project has not been renewed. The same is further substantiated by the factum that the respondent has not got the proposed project registered under the RERA.
21. The respondent has committed gross violation of the provisions of section 18 (1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to the buyer.



22. The complainant submitted that the project, as stated above, was to be completed by November 2014 with grace period of six months. The progress of the project updated on the website of the respondent clearly shows that there is no headway and the respondent has been misleading the customers and not giving them concrete schedule of completion.

23. The complainant submitted that the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation. The complainant, therefore, seek refund of its entire investment along with interest @ 18% p.a. as well as compensation.



Issues raised by the complainants

The relevant issues as culled out from the complaint are as follows:

- i. Whether the respondent/promoter is liable for unjustifiable delay in construction and development of the project in question?
- ii. Whether the respondent/ promoter is liable to refund the amount deposited by the complainant along with [interest@18% p.a.?](#)
- iii. Whether the respondent/ promoter is liable to refund the amount deposited by the complainant along with interest as per provisions of RERA and HRERA?

Relief sought

The complainant is seeking the following relief:-

- i. Direct the respondent to refund a total sum of Rs. 60,37,193/- along with interest @ 18% per annum from the date when payments were made till realization of the amount in full; or



- ii. Direct the respondent to refund an amount refundable as per provisions of The Real Estate (Regulation and Development) Act, 2016 (“RERA”) and Haryana Real Estate (Regulation and Development) Rules, 2017 (“HRERA”);
- iii. Pass such order or further order as this hon’ble authority may deem fit and proper in the facts and circumstances of the present case.

Respondent’s reply

24. The respondent submitted that 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.
25. The respondent submitted that the possession of the said unit was proposed to be delivered by the it to the apartment allottee by November 2014 with an extended grace period of 6 months as agreed by the parties to the agreement which comes out to be May 2015. The completion of the building is delayed by reason of non-availability of steel, other building



materials, water supply, electric power, 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, it 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 it to get the delivery of project delayed. The respondent submitted that it is also pertinent to mention here that due to orders passed by the Environment Pollution (Prevention & Control) Authority, the construction stopped for few days due to high rise in pollution in Delhi NCR. Thus one of the reason behind delayed possession of the projects in the real sector market is the said orders as passed in past as well as present today by the hon'ble authority time to time.



26. The respondent submitted 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 resulted in delay of

delivery of possession as well as financial loss to the promoters. The plea of allottee for refund is not tenable in the eyes of law. Thus, due to insufficient monetary fund as well as huge down fall in the real estate market the allottee has planned to seek refund of the invested money and let the promoter suffer for all aforesaid circumstances.

27. The respondent submitted that the enactment of act ibid is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real sector market. Thus, the plea/ relief of refund claimed by the allottee is not sustainable in the eyes of law, rather it is preplanned to get refund, of his money to get away from breach of contract in future for making further installments by filing such frivolous complaints.

28. 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- E is that it is almost complete. It is expected to



provide possession of tower- E by December 2019. The photographs of the current status of the Tower are attached. The respondent also undertakes to give possession by the year December 2019. No refund at this stage can be made to the complainant when tower is completed/ developed.

29. The complainant submitted that it is pertinent to mention here that when the parties have contracted and limited their liabilities, they are bound by the same and relief beyond the same should not be granted.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

30. With respect to the **first issue** raised in the complaint, the authority came across clause 22 of the agreement according to which the due date of delivery of possession was November, 2014 plus 6 months grace period. Therefore, the due date of possession comes out to be **May, 2015** and the



possession has been delayed by **3 years 9 months and 26 days** till the date of decision.

31. Therefore, under section 18(1) proviso respondent is liable to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. May, 2015 upto the date of offer of possession.

32. With respect to **second and third issues** raised by the complainant, keeping in view the present status of the project and the intervening circumstances, the refund cannot be allowed in the present case, as the respondent has committed to complete its project by 31.12.2019 as per the HRERA registration certificate. Also, the respondent in his reply is stating that each building in the project is almost complete. As the promoter has failed to fulfil his obligation by not



handing over the possession within the stipulated time, the promoter is liable under section 18(1) proviso of the Act ibid read with rule 15 of the rules ibid, to pay interest to the complainant, at the prescribed rate, w.e.f. May, 2015 till handing over of possession.

Findings of the authority

33. 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 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.



35. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
36. 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 of the Act and to fulfil its obligations.
37. Project is registered with the authority and the revised date of delivery of possession is 31.12.2019.
38. As per clause 22 of the flat buyer's agreement dated 25.7.2012 for unit no.1501, tower-E, in project "Araville" Sector-79, Gurugram, possession was to be handed over to the complainant by November 2014 + 6 months grace period which comes out to be May 2015. However, the respondent has not delivered the unit in time. The complainant has already paid Rs.60,37,193/- to the respondent against a total sale consideration of Rs.75,64,698/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f May



2015 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Decision and directions of the authority

39. 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 duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession w.e.f May, 2015 till date of offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- iii. Subsequent interest shall be paid by 10th of every succeeding month. Thereafter, the monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.



40. The order is pronounced.

41. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 26.03.2019

Judgement uploaded on 12.04.2019



HARERA
GURUGRAM

