

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

Complaint no. : 1592 of 2018
First date of hearing : 28.02.2019
Date of decision : 27.03.2019

1. Rashida Ridzhal
2. Krishna Ridzhal
Both R/o. A-704, Park View City-2,
Sohna Road, Sector 49, Gurugram.

Complainants

Versus

M/s Supertech Ltd.
(Through its authorised signatory/director)
Regd. Office: 1114, 11th floor,
Hemkunt Chambers-89, Nehru Place,
New Delhi-110019.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav Advocates for the complainants
Shri Rishabh Gupta Advocate for the respondent

ORDER

1. A complaint dated 30.10.2018 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 Rashida Ridzhal and Krishna Ridzhal, against the promoter M/s Supertech Ltd. on account of violation of the clause 24 of buyer

developer agreement executed on 06.09.2014 in respect of flat/unit described below for not handing over possession by the due date June 2022. Although the complaint is pre-mature on this count, but the complainants are alleging that the construction activity is going at slow pace that there is no possibility of getting the possession of the unit in question by the committed date, which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer developer agreement has been executed on 06.09.2014 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 the 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	"Supertech Azalia", Sector 68, Gurugram.
2.	Nature of the project	Group housing colony
3.	DTCP license no.	106 & 107 of 2013 dated 26.12.2013 89 of 2014 dated 08.08.2014

		134-136 of 2014 dated 26.08.2014
4.	Registered/ not registered	Registered
5.	RERA registration no.	182 of 2017 dated 04.09.2017
6.	Date of completion as per HRERA registration certificate.	31.12.2021
7.	Flat/apartment/unit no.	2508, 25 th floor, tower T3
8.	Unit measuring	600 sq. ft.
9.	Booking date	19.08.2017
10.	Date of execution of buyer developer agreement	06.02.2018
11.	Total consideration amount as per agreement dated 06.09.2014	Rs.40,65,000/-
12.	Total amount paid by the complainants till date	Rs.28,91,716/-
13.	Due date of delivery of possession as per clause 24 of buyer developer agreement i.e. by December 2021 + 6 months grace period	June 2022
14.	Delay in handing over possession till date of decision	Premature
15.	Penalty clause as per buyer developer agreement dated 06.09.2014	Clause 24 of the said agreement i.e. Rs.5/- per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit.

Details of several agreements executed in the present complaint:

	Initially executed agreement	Subsequently executed agreement	Finally executed agreement
Name of the project	Supertech Hues, sector 68	Supertech Hues, Sector 68	Supertech Azalia, sector 68
Flat buyer agreement executed on	06.09.2014	21.09.2015	06.02.2018
Unit no.	0602, 6 th floor, tower P	0602, 6 th floor, tower P	2508, 25 th floor, tower T3
Unit measuring	1765 sq. ft.	1765 sq. ft.	600 sq. ft.
Total sale consideration	Rs.1,27,93,810/-	Rs.1,27,93,810/-	Rs.40,65,000/-
Due date of possession	January 2018 [clause 24, July 2017 + 6 months grace period]	January 2019 [clause 24, July 2018 + 6 months grace period]	June 2022 [clause 23, December 2021 + 6 months grace period]

4. The 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 respondent. A buyer developer agreement dated 06.02.2018 is available on record for the aforesaid unit/flat according to which the possession of the said unit is to be delivered by June 2022. Although the complaint is pre-mature on this count, but the complainants are alleging that the construction activity is going at slow pace that there is no possibility of getting the possession of the unit

in question by the committed date, which is an obligation of the promoter under 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 respondent through its counsel appeared on 28.02.2019. The case came up for hearing on 28.02.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. Briefly stated, the facts of the complaint are that the respondent gave advertisement in various leading newspapers and electronic media about their forthcoming project named "Supertech Hues", Sector-68 Gurgaon, promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, the complainants booked an apartment/flat admeasuring 1670 sq. ft. in aforesaid project firstly with a construction linked plan for a total cost of flat amounting Rs1,19,59,500/- and promise to deliver the flat in three years. Subsequently when the complainants executed the builder buyer agreement on dated 07.08.2014 the respondent has increased the area to 1765 sq. ft. and total cost

of the flat was increased to Rs.1,27,93,810/- and date of delivery of possession July 2017.

7. The complainants submitted that thereafter the respondent called the complainants on the pretext of some correction in the builder buyer agreement and the new builder buyer agreement was executed 27.09.2015 and in that agreement the respondent changed the date of delivery of possession to July 2018 and total sale consideration of Rs.1,27,93,810/- which includes BSP, car parking, IFMS, club membership, PLC etc.
8. The complainants submitted that out of the total sale consideration, they made payment of Rs.28,91,716/- to the respondent as it is a possession linked plan vide different cheques on different dates. That as per flat buyer's agreement dated 27.09.2015, the respondent allotted a unit/flat bearing no 602 on 6th Floor in tower-S having super area of 1765 sq. ft. to the complainants. That as per clause 24 of the flat buyer agreement dated 27.09.2015, the respondent had agreed to deliver the possession of the flat in July 2018 with an extended period of six months.
9. The complainants submitted that they regularly visited the site but were surprised to see that construction work is not in progress and no one was present at the site to address the

queries of the complainants. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the tower without completing the work. That despite receiving all payment as demanded by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.

10. The complainants submitted that the construction of the block in which the complainants flat was booked with a promise by the respondent to deliver the flat by July 2018 but was not even started in time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
11. The complainants submitted that due to this omission on the part of the respondent, the complainants who are citizen of Russian Federation has been suffering from disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses. Now the complainants want to move back to Russia along with their children as they have finished the school education and the

complainant is suffering with brain tumor from 2015 and unable to manage business alone in India.

12. The complainants submitted that they again wrote a letter for refund to the respondent on 30.03.2017 and the respondent told the complainant we do not have the refund policy ,but we can change your unit to “Scarlet Corporate Suits” in Supertech Azalia –Sector 68 and allotted unit no. 2508 ,tower T3 admeasuring 600 sq. ft. which is about to deliver in two months and you do not need to pay extra money for the same. The complainants need to sign some documents and again the respondent executed a new builder buyer agreement on dated 06.02.2018 but the complainants were shocked to see when they visited the site that even the new flat is also not constructed and when the complainants checked the builder buyer agreement the date of delivery of possession in clause 23 was again changed to Dec 2021.
13. The complainants submitted that they requested the respondent several times by making telephonic calls and also personally visiting and sent an email to the office of the respondent for refund of the amount along with prescribed interest on the amount deposited by the complainants, but respondent has flatly refused to do so.

14. Issues raised by the complainants are as follow:

- i. Whether the respondent is liable to refund the amount paid by the complainants?

Reliefs sought by the complainants

15. The respondent be directed refund the amount of Rs.28,91,716/- along with prescribed rate of interest from the date of booking of the flat in question.

Respondent's reply

16. The respondent submitted that the complaint filed by complainants is premature. Hence, it is liable to be dismissed on this ground alone. As per subsequent BBA dated 06.02.2018 executed between the parties for allotment of unit no. T-3 of Supertech Azalia, the proposed possession date for the allotted unit was month of December 2021 and as per the agreed terms and conditions of the flat buyer agreement, a further grace period of 6 months was also agreed by the parties, which will end up in June 2022 and prior to this no cause of action arose in the favour of the complainants for filing the complaint.
17. The respondent submitted that the said project is registered before the hon'ble authority vide registration no. 182 of 2017 which is valid up to December 2021.

18. The respondent submitted that the complainants has not come with clean hands and has suppressed true and material fact before this hon'ble authority. It is submitted that the complainants themselves given undertaking by way of affidavit stating that "due to some personal reasons, I don't want to purchase the said flat and therefore request the developer to cancel the booking of the said flat and transfer the amount paid by me till date in respect of the said flat to flat no.2408, tower T3 booked by Mr. Krishna Ridzhal and Rashida Ridzhal in the 'Scarlet Corporate Suits' Sector 68, Gurugram, after making adjustments as per the norms of the company." Thus, this act and conduct of the complainants shows how illegally complainants are indulging the respondent by filing the frivolous complaint against them. Hence, the complaint may also be liable to be dismissed on this ground also.
19. The respondent submitted that it has been held in various authorities by Apex Court that "if a complaint is premature then it can either await maturity or be returned to the complainants for filing later."

Determination of issues

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

20. With respect to the **issue** raised by the complainants, the complainants do not wish to continue with the project. During arguments, it was stated by the complainant no. 1 that since the complainant no. 1 is a Russian citizen and her husband is an Indian, the complainants wants to go back to Russia and seeks refund of the deposited amount.

Findings of the authority

21. **Jurisdiction of the authority**-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 & Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

22. Arguments heard as per clause 24 of the builder buyer's agreement dated 06.2.2018 for unit no. 2508, 25th Floor, Tower-T3, in project "Supertech Azalia" Sector-67, Gurugram, possession was to be handed over to the complainant by December 2021 + 6 months grace period which comes out to be June 2022. Complainant has already paid Rs.28,91,716/- to the respondent against a total sale consideration of Rs.40,65,000/-.

Directions of the authority

23. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play:
- i. The authority directs the respondent to refund the amount deposited by the complainants after deducting 10% of the total sale consideration.

24. Complaint stands disposed of.
25. The order is pronounced.
26. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

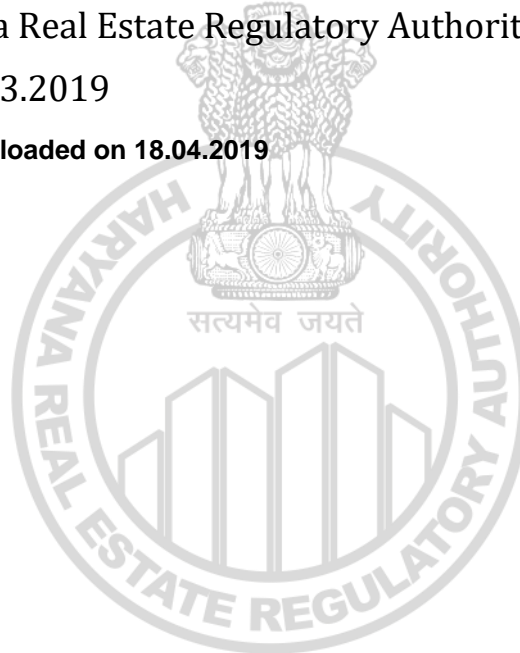
Dated: 27.03.2019

Judgement uploaded on 18.04.2019

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram



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