

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

Complaint no. : 555 of 2018
First date of hearing : 10.09.2018
Date of decision : 11.04.2019

Mrs. Neetu Sharma
R/o House no.3, Vibhav Nagar, Jalesar Road,
Ferozabad (U.P.)-283203.

Complainant

Versus

M/s Supertech Ltd.
Regd office:1114,11thfloor, Hemkunt
Chambers,
89, Nehru Place,
New Delhi-110019.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Naresh Kumar Yadav Advocate of the complainant
Shri Rishabh Gupta Advocate of the respondent

ORDER

1. A complaint dated 18.07.2018 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 Mrs. Neetu Sharma against the promoter M/s Supertech Ltd. on account of violation of clause 25 of the buyer developer agreement

executed on 18.07.2014 for unit no. 2202, 22nd floor, F tower in the project “Supertech Hues”, located at Sector 68, Gurugram for not giving the possession on due 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 18.07.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 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 Hues”, Village Badshahpur, Sector 68, Gurugram.
2.	Nature of the project	Group housing project
3.	DTCP licence no.	106 and 107 of 2013 dated 26.12.2013
4.	Project area	32.83 acres
5.	Registered/ not registered	Registered vide no. 182 of 2017 dated 04.09.2017
6.	Revised date of completion of project as per RERA registration	31.12.2021
7.	Payment plan	Construction linked plan
8.	Date of execution of buyer developer agreement	18.07.2014 (Annx 5)

9.	Unit no.	F/2202, 22 nd floor, tower-F
10.	Unit area	1180 sq. ft.
11.	Total consideration	Rs. 87,30,440 /- as per agreement
12.	Total amount paid by the complainant	Rs. 27,07,000/- (as per customer statement, Annx 6)
13.	Due date of delivery of possession as per clause 25 of buyer developer agreement.	31.12.2017 Note - 42 months i.e.by June, 2017+ 6 months grace period
14.	Delay in handing over possession till 11.04.2019	1 year, 3 months and 11 days approx.
15.	Penalty clause 25 as per buyer developer agreement	Rs. 5/- per sq. ft. of super area of the unit per month

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 18.09.2018. The case came up for hearing on 18.09.2018, 07.12.2018 and 08.01.2019, 18.01.2019, 15.02.2019 and 11.04.2019. The reply has been filed on behalf of the respondent on 28.09.2018 which has been perused by the authority.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant is that the she was in dire need of a residential

accommodation at Gurugram (Haryana) which may have good infrastructure and all basic facilities/amenities for residing therein with their family members for better future prospectus of their children. The respondent assured her that they would also complete the construction of the said project and deliver the physical possession of the individual units of the same by June 2017.

6. The complainant submitted that believing, trusting and on the basis of respondent's representation, persuasion, assurances, the complainant through her expression of interest booked to flat and sought priority in allotment of a residential unit in any of respondent's projects at Gurugram (Haryana) and made payment on account of advance booking amount to respondent of an amount of Rs. 6,00,000/- and the respondent issued acknowledgement thereof on 23.12.2013 in favour of her.
7. The complainant submitted that the respondent issued applicant file in favour of her on 18.03.2014 and allotted her a residential unit no. 2202, 22nd floor, type - G, 1,130 sq. ft., unit in project known as "Supertech Hues" located within the revenue estate of village Badshahpur, at Sector 68, Gurugram (Haryana), being developed by respondent, at a total consideration of Rs 81,71,230/-. Further, submitted that respondent made an alternative offer of allotment on 04.06.2014 to the complainant

from the existing flat i.e. super area 1130 sq ft., tower –G/2202 floor 22nd and reoffered flat 1,180 sq. ft., tower/ flat no. F/2202, floor 22. The respondent issued applicant file dated 04.06.2014 in favour of complainant in respect of the aforesaid residential unit in the aforesaid project, being developed by the respondent, at a total consideration of Rs. 85,09,780/-.

8. The complainant submitted that the buyer developer agreement was made on 18.07.2014 by and between respondent and her in respect of the aforesaid residential unit in the aforesaid project. Further, the respondent agreed to sell and transfer upto the complainant and she agreed to purchase the aforesaid residential unit in the aforesaid project at a total consideration of Rs. 87,30,440 /-.
9. The complainant submitted that as per buyer developer agreement, clause no.1 of the aforesaid agreement as well as clause 25 of the terms and conditions of the aforesaid agreement, the possession of the aforesaid residential unit was to be handed over by the respondent to the complainant within 42 months. The date of possession was June 2017. So far, the complainant has not been offered by the respondent.
10. The complainant submitted that she visited the aforesaid project of the respondent to know the progress of the

construction of the aforesaid project. Despite repeated efforts made by her since the date of the allotment of the flat in the aforesaid project through personal visits, phone calls, emails, the complainant did not receive any satisfying answer/response in respect of the completion of construction of the aforesaid project and handing over the possession of the aforesaid residential unit to the complainant. As of now, there is no hope of its completion of construction with all basic and necessary amenities and facilities and the same is likely to be completed up December 2019.

11. The complainant submitted that she intends to withdraw from the project and had made a demand through a legal notice sent on 16.12.2017 through his counsel Sh. Rajender Prasad Sharma, Advocate, to the respondent calling upon him to refund the amount of Rs, 27,07,000 /- received by the respondent in respect of the aforesaid residential unit allotted to the complainant with prescribed interest. The respondent has failed to refund the amount.

Issues to be decided:-

- i. Whether the respondent has violated the provisions of the RERA and rules and regulations made thereunder and also contravened or violated the terms and conditions of the

aforesaid agreement and failed to complete the construction of the aforesaid project by June 2017 and is unable to handover the physical possession of the aforesaid residential unit to the complainant by June 2017 in accordance with the aforesaid agreement?

- ii. Whether the respondent is responsible to refund/return an amount of Rs. 27,07,000 /- alongwith prescribed interest to the complainant since the booking of the aforesaid residential unit till its full and final realization?

Reliefs sought:-

- Direct the respondent to refund the amount of Rs. 27,07,000 /- to the complainant along with the prescribed interest.

Respondent's reply:-

12. The respondent submitted that the complainant has not come with clean hands before this hon'ble forum and has suppressed the true and material facts from this hon'ble forum. Further, submitted that the project "Supertech Hues" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 04.09.2017. The authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021. Thus, in view of

the said registration certificate, the respondent hereby undertakes to complete the said project on or before the year 2021 but the tower F has almost been completed/ developed. The respondent is expected to provide offer of possession by June, 2020.

13. The respondent submitted that the possession of the said premise is proposed to be delivered by the respondent to the apartment allottee by June 2017 with an extended grace period of 6 months as agreed by the parties to the agreement which comes to December 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 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. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed. It is also submitted that due to stagnation, sluggishness, down fall in real estate market, due to demonetisation 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 as if, for example, the rate of real estate sector (Flat/ plots) be the same as were in 2010 to 2014, no one allottees/ purchaser/ buyer would come to knock the door of this Hon'ble Form and seek relief of refund. 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.

14. The respondent submitted that the complainant have filed this compliant after the demand letter of Rs. 31,76,633/- issued by the respondent. The demand letter was issued on 03.11.2017 and to get safe from paying the instalment, the complainant have filed this frivolous complaint. This act, conduct of the complainant elucidates about that the complainant have no sufficient funds to pay the instalments and now has dragged the respondent into frivolous litigations and making false pleas and allegations on respondent for seeking refund.
15. The respondent submitted that the said project is a continuance business of the respondent and it will be completed by the year 2021. The current status of the tower- F is that almost 70 % of

the building has been constructed. The respondent is expected to provide offer of possession of tower- F by June 2020. The photographs of the current status of the tower are attached herewith as annexure R3. The respondent also undertakes to complete the project by the year 2021, as disclosed before the authority as per provisions of RERA, the additional information had also been given before the hon'ble forum while getting the project registered under RERA. No refund at this stage can be made to the complainant when almost 70% of the tower is completed/ developed.

16. The respondent submitted that when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted. Therefore, according to terms and conditions of builder buyer agreement no cause of action arises for filing of the present complaint. Clause 2 of the buyer developer agreement is herein reproduced below:-

The developer hereby agrees to pay penalty to the buyers @ of Rs.5/- per sq. feet of super area of the allotted unit per month for any delay in handing over possession beyond the given possession date plus grace period of 6 months and upto the offer of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances. However, any delay in project execution or its possession caused due to force majeure conditions or any judicial

pronouncement shall be excluded from the aforesaid possession period. The compensation amount will be calculated after the lapse of the grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the buyer till such date, at the time of final account settlement before possession of the unit.

17. Determination of issues-

- i. With respect to the **first and second issue** raised by the complainant, the authority came across that as per clause 25 of buyer's developer agreement dated 18.07.2014, the possession of the apartment/flat in question was to be handed over within 42 months i.e. by June 2017 plus grace period of 6 months. Grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond the control of respondent. The clause regarding the possession of the said unit is reproduced below:

".....25. the possession of the unit shall be given in 42 months i.e. by June 2017 or extended period as permitted by the agreement plus the grace period of 6 months' and upto the offer letter of possession or actual physical possession whichever is earlier"

Accordingly, the due date of possession was 31.12.2017 and the possession has been delayed by one year, three months and 11 days approx. till the date of decision. The delay compensation payable by the

respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 42 + 6 months as per clause 25 of buyer developer agreement 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 as also held 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.”

- ii. The project is registered with the authority vide no. 182 of 2017 as per which the revised date of completion of project is 31.12.2021. So the order for refund at this belated stage would not serve the ends of justice as it will hamper the interest of other allottees as well who wishes to continue with the project.
- iii. However, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum

as per the provisions of section 18 (1) proviso of the Real Estate (Regulation & Development) Act, 2016.

Findings of the authority:-

18. The authority has complete subject matter jurisdiction to decide the complaint regarding 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, 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.
19. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
20. 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.

21. Arguments heard. As per clause 25 of the builder developer agreement dated 18.07.2014 for unit no. F/2202, 22nd floor, tower F, in the project “Supertech Hues”, Sector- 68, Gurugram, possession was to be handed over to the complainant within a period of 42 months i.e. by June, 2017 plus 6 months’ grace period which comes out to be 31.12.2017. However, the complainant has already paid Rs. 27,07,000/- to the respondent as against the total sales consideration of Rs. 87,30,440/-. As such the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum with effect from 31.12.2017 as per the provision of section 18 of the Act.

Decision and directions of the authority:-

22. The authority, exercising its powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent-
- i. The respondent shall be liable to pay delayed possession charges at prescribed rate i.e. 10.70% per annum from the due date of delivery of possession (31.12.2017) till actual offer of possession.
 - ii. The interest so accrued from the due date i.e. 31.12.2017 till the date of order be paid within 90 days of this order and

thereafter the monthly interest be paid on 10th of each subsequent month till the handing over the possession.

iii. The complainant is directed to pay outstanding dues. If any, after adjustment of interest for delayed period. Interest on due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.70% per annum by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

iv. The respondent is further directed not to charge any other charges from the complainant which is not the part of builder developer agreement.

22. The complaint is disposed of accordingly.

23. The order is pronounced. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.04.2019

Judgement uploaded on 18.04.2019