

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

Complaint No. : 1689 of 2018
Date of first hearing : 07.03.2019
Date of Decision : 28.03.2019

Mr. Girja Shankar Dutt
R/o 180, National Media Centre, shanker
Chowk, N.H.-8, DLF-III, Gurugram-122002 **...Complainant**
Also at: 111A, Patliputra Colony, Patna,
Bihar-80013

Versus

M/s Supertech Limited
Regd. Office: 1114, 11th floor, Hemkunt
Chamber, 89, Nehru Place, New Delhi-110019 **...Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Girja Shankar Dutt **Complainant in person**
Shri Rishabh Gupta **Advocate for the respondent**



ORDER

1. A complaint dated 06.12.2018 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 Shri. Girja

Shankar, against the promoter M/s Supertech Ltd., in respect of apartment described below in the project 'Araville' on account of violation of obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the buyer developer agreement has been executed on 09.08.2014, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligations on the part of 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" in Sector 79, Gurugram
2.	Nature of real estate project	Group housing Project
3.	Unit no.	0802, 8 th floor, 48 canvas Tower F
4.	Unit area	3620 sq.ft
5.	Project area	2 acres
6.	Registered/ not registered	GGM/16/2018
7.	Revised Date of delivery	31.12.2019
8.	DTCP license	37 of 2011 dated 26.04.2011



9.	Date of buyer developer agreement	09.08.2014
10.	Date of booking	05.04.2014
11.	Total consideration	Rs. 2,42,10,310 /- (as per agreement)
12.	Total amount paid by the complainant	Rs. 53,97,175 /- (as per applicant file annexure-B5a)
13.	Payment plan	Possession linked payment plan
14.	Date of delivery of possession	28.02.2017 Clause 25- Possession of the unit shall be given by August 2016 with a grace period of 6 months.
15.	Delay of number of months/ years till 28.03.2019	2 years 1 month
16.	Penalty clause as per buyer's developer agreement dated 09.08.2014	Clause 25-Rs. 5/- per sq. ft. per month of the super area for the period 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 buyer developer agreement dated 09.08.2014 is available on record according to which the possession of the unit was to be delivered by 28.02.2017.

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 07.03.2019 and 28.03.2019.



The reply has been filed by the respondent and the same has been perused.

Facts of the complaint

6. Briefly stated, the facts of the complaint are, that the complainant booked a unit in the year 2014, in project Araville, Sector 79, Gurugram being developed by the respondent company.
7. The complainant submitted that he made a total payment of Rs 53,97,175/-. Thereafter, the complainant met Ms. Sulekha, then Vice President and the site officer in charge of the respondent company and brought to her notice the unsatisfactory and sub-standard pace of work being carried out. To this, she promised to rectify the same. The respondent assured to deliver the possession of the flat in 2016 as per agreement and its terms and conditions.
8. The complainant submitted that since the complainant is a retired IAS Officer and his children are settled in Gurugram so he had to shift to Gurugram with his wife positively by 2016. On seeing that the respondent were not going to keep their promise of handing over the flat in 2016, the complainant was left with no alternative but to buy an independent house in



National Media Centre DLF 3, Gurugram, where he now resides with his wife and son.

9. The complainant submitted that as there was no positive response from the respondent therefore, the complainant petitioned before the Deputy Commissioner Gurugram Mr. V.P. Singh and the DC instructed Mr. R.S. Bhaat D.T.P., Gurugram to resolve the issue with Super Tech Limited.

9. The complainant submitted that the said apartment, has not been completed till date (more than 48 months from booking date), and no justification has been given for the delay at multiple occasions of enquiry.

10. The complainant submitted that the payments were made in time and the respondent, has acknowledged the same, yet work deliverables for that stage was and still is incomplete. It is further submitted that e-mails were exchanged with the respondent highlighting inordinate delay and substandard work along with meetings at site office requesting resolution of the complainant's case but to no avail.

10. Issues raised by the complainant

The relevant issues raised in the complaint are:



- I. Whether the complainant is entitled to refund the amount deposited by the complainant along with the prescribed rate of interest?

11. Relief sought

Direct the respondent to refund the amount respondent refund the amount of Rs. 53,97,175/- along with prescribed rate of interest from August 2016.

Respondent's reply

12. 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. The complainant has not come with clean hands before this hon'ble authority and has suppressed the true and material facts from this hon'ble forum.
13. The respondent submitted that the project 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 is proposed to be delivered by the respondent to the allottee by August 2016 with an extended grace period of 6 month as agreed by the parties to the agreement which comes to March



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. 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. Thus, one of the reason behind delayed possession of the projects in the real estate sector market is that the said orders as passed in past as well as present today by the hon'ble authority, from time to time.



15. The respondent 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. 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. It is also submitted that the enactment of RERA Act 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 of refund claimed by every allottee is not sustainable in the eye of law, rather is preplanner to get refund their money to get safe from breach of contract in future for making further instalments , by filing such frivolous complaint.
17. The respondent further submitted that the 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- F is that it is almost completed. The respondent is expected to provide possession of Tower- F by December 2019. The photographs of the current status of the Tower are attached with the paper book. 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.

18. The respondent submitted that the complainant has paid approx. 22% of the total sale consideration as per payment plan mentioned in agreement. This shows that the complainant is investor who invested the money with a view to earn quick profit but his imagination has went wrong due to not being possessed with sufficient funds and a huge downfall in the real estate market.

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:

19. In respect of **sole issue** raised by the complainant, the due date for handing over possession as per the agreement dated 09.08.2014 which comes to 28.02.2017. however, due to slow pace of work at the project site and no satisfactory response by the officials of the respondent, the complainant had no other option but to look for another abode for himself and his family. Accordingly, the complainant purchased another residential unit as submitted by him in his pleading. Thus,



keeping in view of the submissions of the complainant and in interest of justice, the authority is of the considered opinion that the complainant is entitled to refund of the amount paid by him along with interest.

20. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
21. 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.
22. The complainants reserve his right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

23. **Jurisdiction of the authority-** The project "Araville" is located in Sector-79, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is residential



in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

24. The authority has complete 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.

25. The authority is of the view that as per averments made by the complainant that there is no progress w.r.t. construction work at the site. The complainant has also placed on record certain photographs of the project depicting the dismal state of affairs of the project and countering the averments made by the complainant, counsel for the respondent admitted the fact the possession of the booked unit was proposed to be delivered to the complainant by August, 2016 with an extended grace period of six months as agreed to by the parties. The respondent further submits that delay in handing over the possession was occurred on account of non-availability of raw materials, such as, steel, cement, power and water supply or slow down strike. In addition to this, work at the site had to be



stopped for few days due to orders passed by Environment Pollution(Prevention & Control) Authority.

26. Considering the rival arguments advanced by the parties and perusing the photographs placed on record with regard to progress of work at the site, the authority is of the considering opinion that complainant is not at all concerned with non-availability of raw materials and other factors on the ground of which the respondent could not complete the project in time. It was the responsibility of the respondent to arrange the material and manpower to complete the project and to fulfil its obligations to deliver the project in time. The contentions of the respondent are not tenable at this point of time where the project is already delayed by more than two years.

27. 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 directs the respondent to refund the principal amount of Rs. 53,97,175/- paid by the complainant along with prescribed rate of interest.

Directions of the authority

28. 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 respondent is directed to refund the principal amount of Rs. 53,97,175/- paid by the complainant along with prescribed rate of interest i.e. 10.75% within a period of 90 days from the issuance of this order.

29. The complaint is disposed off accordingly.

30. The order is pronounced.

31. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.03.2019

Judgement uploaded on 25.04.2019