

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

Complaint no. : 1979 of 2019
First date of hearing: 11.09.2019
Date of decision : 26.02.2020

1.Mr. Akshay Kumar Gupta
2.Mr. Ashish Kumar Gupta
Both: - R/o B1303, BPTP
Freedom Park Life, Sector-57,
Gurugram

Complainants

Versus

1.M/s Supertech Limited.
Regd. office: 1114, 11th floor,
Hemkunt Chambers, 89, Nehru
Place, New Delhi- 110019
2.HDFC Limited- Home Loan
Office at: 1st floor, S.C.O-14,
Sector-14, Gurugram

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Akshay Kumar Gupta
Mr. Ashish Kumar Gupta
Sh. Rishabh Gupta

Complainants in person
Advocate for the respondent no.1

ORDER

1. The present complaint dated 16.05.2019 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Supertech Hues", Sector- 68, Gurugram.
2.	Project area	32.83 acres [as per RERA Registration]
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	106 of 2013 and 107 of 2013 dated 26.12.2013 valid till 25.12.2017. 89 of 2014 dated 08.08.2014 valid till 07.08.2019 134-136 of 2014 dated 26.08.2014 valid till 25.08.2019
5.	Name of licensee	Sarv Realtors Private Limited
6.	RERA Registered/ not registered	Registered vide no. 182 of 2017 dated 04.09.2017 (Tower No. A to H, K, M to P and T to V, W)

7.	RERA registration valid up to	31.12.2021
8.	Unit no.	E/1601 16 th floor, Tower E [Page 55 of complaint]
9.	Unit measuring	1180 sq. ft.
10.	Date of execution of buyer developer agreement	28.06.2014 [Page 54 of complaint]
11.	Payment plan	Subvention payment plan [Page 56 of complaint]
12.	Total consideration as per payment	Rs. 94,33,720/- [page no 56 of complaint]
13.	Total amount paid by the complainants as per statement of payment received dated 25.04.2019	Rs. 93,83,799.32/- [page no 34&35 of complaint]
14.	Sanctioned Home Loan amount by HDFC Bank	Rs.75,00,000/- [Page 92 of complaint]
15.	Due date of delivery of possession as per clause E (24) of the buyer developer agreement: by April 2017 + 6 months grace period. [Page 61 of complaint]	30.10.2017
16.	Delay in handing over possession till date of this order	Possession has not been handed over so far
17.	Status of the project	Ongoing

3. As per clause E (24) of the buyer developer agreement, the possession was to be handed over by April 2017 plus further period of 6 months. But the promoter/respondent has failed to

handover the possession to the complainant. Clause E (24) of the Buyer Development Agreement is reproduced hereunder:

"E. 24 POSSESSION OF UNIT

The possession of the unit shall be given in 42 months i.e. by April 2017 or extended period as permitted by the agreement. However, the developer hereby agrees to compensate the Buyer(s) @₹5/ per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and Upto the Offer Letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances....."

4. As purview of the fact mentioned aforesaid, it is crystal clear that as per the clause E(24) of the agreement to sell that the unit no. 1601, 16th Floor, Tower E had to be handed over by April, 2017 along with additional grace period of 6 months, which comes out to be 30.10.2017 from the date of execution of agreement to sell. Whereas the builder has miserably failed in completing the project and handing over the unit to the home buyer for which he has paid an amount of Rs.93,83,799.32/- against the total sale consideration of Rs.94,33,720/- Since the builder has failed miserably in completing his obligation as per



the provision of section 18(1) of RERA Act the buyer can either seek refund or possession at prescribed rate of interest till the actual handing over of possession. In the present case the buyer is seeking delayed possession charges.

5. The complainant submitted that the buyer developer agreement and MOU for booking under scheme (No EMI till Possession) was signed on 28th June 2014. The subvention scheme signed with HDFC.
6. The complainants submitted that the total amount of part EMI pending is Rs.1,49,844(7-part EMI paid Rs.59,688 in place of Rs.81,100)
7. The complainants submitted that from Jan'2019 to till April'2019, four EMIs have not been paid by the developer/builder to complainants.
8. The respondents have utterly failed in fulfilling their obligation to deliver the unit as per the buyer developer agreement and failed to offer possession in terms of section 11(4) (a) and 18 of the Act read with Rules. Hence, this complaint for the inter alia reliefs, detailed hereinbelow:

Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent no. 1 to pay the pending part EMI's for March 2018 to September 2018 with interest;



- ii. Direct the respondent no. 1 to pay the EMI paid by the complainant per month January 2019 till filing of the complainants;
 - iii. To direct the respondent no. 1 to pay all unpaid future EMIs @ Rs. 81,100/- per month as postdated cheques dated first day of each month till December 2021 to till the date of actual possession;
 - iv. To direct the respondent no. 1 to pay penalty for delay possession;
 - v. To direct the respondent no. 2 that all further EMIs will be paid only after EMI received from Respondent no.1;
 - vi. To pass an order to commence and complete the physical construction work within time schedule;
9. The respondent no. 1 contest the complaint on the following grounds:
- a. The respondent no.1 submitted that the project "Supertech Hues" is registered under the Haryana Real Estate Regulatory Authority vide registration no. 182 of 2017 dated 04.09.2017. The Authority has 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.

- b. The respondent no.1 submitted that the possession of the said premises is proposed to be delivered by the respondent to the Apartment Allottee by April'2017 with an extended grace period of 6 months which comes to by October'2017.
- c. The respondent no.1 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 is that superstructure work has been constructed and some internal development is yet to be completed/developed. The respondent also undertakes to complete the project by the year 2021.
10. The respondent no. 2 contests the complaint on the following grounds:
- a. The respondent no.2 submitted that it is no way concerned with the present complaint, contests of which pertain to disputes between the complainants and the respondent no. 1, except that respondent no.2 has sanctioned and disbursed the Home loan of Rs.75,00,000/- in terms and conditions of the Home Loan Agreement (Loan A/C No. 611837494) dated 11.07.2014 and tripartite Agreement dated 28.06.2014.

- b. The respondent no.2 submitted that the complainant had availed Home loan facility from Respondent no.2 i.e. HDFC Ltd. and admittedly first disbursement of Rs.34,24,329/- towards the same was made on 11.07.2014 and second disbursement of Rs.24,41,830/- towards made on 16.03.2016 and third disbursement of Rs.13,89,68/- towards made on 20.10.2016 and fourth disbursement of Rs.2,67,161/- based upon the instructions of the complainants/Borrowers.
- c. The respondent no.2 submitted that subvention is an understanding /agreement between the complainants and the respondent no.1(Builder), wherein the builder assumes the liability of the borrower for a certain period of time towards repayment of the loan in form of EMI/PEMI and respondent no.2 has no role to play in the same.
11. Arguments of both sides were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time as per clause E (24) of the agreement to sell.
12. On consideration of the circumstances, the evidence, other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the

respondent is in contravention of the provisions of the Act. By virtue of clause E (24) of buyer developer agreement executed between the parties on 28.06.2014, possession of the booked unit was to be delivered within stipulated time i.e. by 30.04.2017 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 30.10.2017. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the buyer developer agreement dated 28.06.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. Also, MoU was executed between the parties on 28.06.2014 w.r.t sub-vention scheme. Clause B of the MoU is re-produced as under: -

"(b) That the tenure of this sub-vention scheme as approved by HDFC Limited is 36 months. The developer expects to offer possession of the booked unit to the buyer by that time. However, if due to any reason, the possession offer of the booked unit gets delayed, then the developer undertakes to pay the EMI only to the buyer even after 36 months. The payment of EMI shall continue till offer of possession with regard to the booked unit is issued to the buyer".

Since the substantial part of the payment to the tune of Rs. 82,00,000/- has been raised by the developer on behalf of the complainant from HDFC Limited. Despite the fact that the pre-



EMIs are being paid by the complainant, however, interest liability along with the principal amount is that of the complainant till the offer of possession. In such type of cases, the builder/developer who has paid EMIs for a particular period of 36 months that principal amount shall not be the part of the interest. However, the complainant/allottee is entitled for delayed possession charges till the offer of possession after obtaining of occupation certificate by the respondent on the rest of the amount which he had paid from his pocket on account of raising of loan. In view of the above the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.15% p.a. w.e.f. 01.11.2017 till actual offer of possession as per the provisions of section 18(1) of the Act read with rules 15 of the Rules.

13. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:


- (i) The respondent is directed to pay delayed possession charges @10.15% per annum till offer of possession after obtaining of occupation certificate by the respondent on the rest of the amount which he had paid from the pocket on account of raising of loan, as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

(ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent months.

(iii) The respondents are not charge anything from the complainant which is not part of the Buyer Developer Agreement.

14. Complaint stands disposed of.

15. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 26.02.2020

Judgement uploaded on 15.05.2020

HARERA
GURUGRAM