

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

Complaint no. : 389 of 2019
First date of hearing : 23.07.2019
Date of decision : 11.12.2019

1. Mr. Hardik H Trivedi
2. Ms. Jugnu Ramesh Mehta
Both rr/o 14F, Pocket-K,
Sheikh Sarai-2,
New Delhi- 110017

Complainants

Versus

M/s Ramprashtha Promoters and
Developers Private Limited.
Regd. office: 114, Sector-44,
Gurugram-122002.(Haryana)

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sh. Nilotpall Shyam and Ms. Shivali. Advocates for the complainants

Sh. Dheeraj Kapoor Advocate for the respondent

Ms. Rashmeet Virk A.R of the respondent company

ORDER

1. The present complaint dated 21.02.2019 has been filed by the complainants/allottees in Form CRA 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	"The Edge Tower", Sector-37D, Gurugram.
2.	Project area	60.5112 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid till 18.02.2020
5.	Name of licensee	M/s Ram prastha Builders Private Limited and eleven others as mentioned in licence no. 33 of 2008 issued by DTPC Haryana (copy annexure R-7, at page no. 155 of reply)
6.	RERA Registered/ not registered	Registered vide no. 279 of 2017 dated 09.10.2017 (Tower No. A to G, N and O)
7.	RERA registration valid up to	31.12.2018 Note:- already expired but the respondent has applied for extension of one year and the status of RERA extension

		application is pending.(page 21 of reply)
8.	Unit no.	F-1301, 13 th floor, tower F [Page 37 of complaint]
9.	Unit measuring	1310 sq. ft.
10.	Allotment letter	02.09.2013 [page no 31 of complaint]
11.	Date of execution of buyer's agreement	07.09.2013 [Page 33of complaint]
12.	Payment plan	Construction linked payment plan [Page 62 of complaint]
13.	Total consideration as per statement of account dated 05.04.2019 (annexure R-3 page no 102 of reply which is applicant file)	Rs.43,95,805/-
14.	Total amount paid by the complainants as stated by the complaint and as per schedule of payment plan (annexure R-3 page no 104 of reply)	Rs.37,89,159/-
15.	Due date of delivery of possession as per clause 15(a) of the apartment buyer agreement : 31.08.2012 + 120 days of further period [Page 47 of complaint]	31.12.2012 There are two agreements viz the first dated 14.10.2010 executed between the original allottees and the respondent promoters and the second dated 07.09.2013 executed between the complainants and the respondent. They contain almost the same terms & conditions and most importantly the date of the handing over the possession of the subject apartment has been given as 31.08.2012 with a grace period of hundred and twenty(120) days, for applying

		and obtaining the occupation certificate in respect of the Group Housing Complex in both agreements
16.	Delay in handing over possession till date	Possession not handed over so far
17.	Status of the project	Ongoing
18.	Specific relief sought	To direct the respondent to deliver the possession along with prescribed rate of interest per annum for delayed period in handing over the possession

3. As per clause 15(a) of both the agreements, the possession was to be handed over by of 31.08.2012 plus further period of 120 days for applying and obtaining the occupation certificate in respect of the Group Housing Complex which comes out to be 31.12.2012. Clause 15 of the promoter buyer agreement is reproduced below:

"15. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and

compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31/08/2012 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

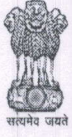
4. The respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the apartment buyer's agreement and failed to offer of possession in terms of section 11(4) (a) and 18 of the Act read with Rules. Hence, this complaint for the inter alia reliefs, detailed above.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. The respondent submitted that there was no intentional delay in the construction on the part of the respondent and delay was due to the reasons detailed in the reply which were beyond its control.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
8. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
Arguments are heard
9. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
10. On consideration of the circumstances, the evidence and other record and submissions made by the complainant 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 15(a) of apartment buyer's agreement executed between the parties on 14.10.2010/07.09.2013,

possession of the booked unit was to be delivered within time that 31.08.2012 plus grace period of 120 days for applying and obtaining the occupation certificate in respect of the Group Housing Complex. Therefore, the due date of handing over possession comes out to be 31.12.2012. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 14.10.2010/07.09.2013 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. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 31.12.2012 till actual handing over the possession of the booked unit as per the proviso to section 18(1)(a) of the Act read with rules 15 of the Rules.

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

- (i) The respondent is directed to pay interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 31.12.2012 till the offer of possession.

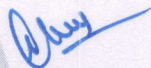


- (ii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iii) The respondent is directed to pay interest accrued from 31.12.2012 till the date of this order to the complainants within 90 days from the date of this order and subsequent interest to be paid by the 10th of each succeeding month.
- (iv) Complaint stands disposed of.
- (v) File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 11.12.2019

Judgement Uploaded on 17.01.2020

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