

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

Complaint no. : 818 of 2019
First date of hearing: 28.08.2019
Date of decision : 11.12.2019

1. Mr. Nimesh Bhandari
2. Mrs. Nikki Bhandari

Address: B-901, Epitome Crowne, Ranka **Complainants**
Colony Road, Bilekahalli, opposite SNN Raj
Lake View, Bannerghatta Road
Bangalore-560076
Karnataka

Versus

M/s Ramprastha Promoters and Developers
Pvt. Ltd.

Address: 114, Sector-44
Gurugram-122002
Haryana

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Nilotpal Shyam and Ms.
Shivali
Shri Dheeraj Kapoor
Ms. Rashmeet Virk

Advocates for the
complainants
Advocate for the respondent
AR of respondent company

ORDER

1. The present complaint dated 07.03.2019 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form: -

S.No	Heads	
1.	Project Name and location of the project	"The Edge Tower", Sector 37D, Gurugram
2.	Project Area	60.5112 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid up to 18.02.2020
5.	Name of licensee	M/s Ramprastha Builders Private Limited and eleven others as mentioned in licence no. 33 of 2008 issued by

		DTCP Haryana (copy as annexure R7, at page no. 115-119 of reply)
6.	RERA Registered/not registered	Registered vide no. 279 of 2017 dated 09.10.2017(Tower A to G, N and O)
7.	RERA registration valid Upto	31.12.2018 Note: already expired but the respondent has applied for extension of one year and the status of RERA extension is pending as on page no. 17 of reply
8.	Unit no.	A603, 6 th floor, Tower no. A (Page no. 26 of complaint)
9.	Unit measuring	2390 sq. ft.
10.	Allotment Letter	23.09.2010 (Page no. 59 of complaint)
11.	Date of execution of apartment buyer's agreement	24.09.2010 as annexure 1

		(Page no. 23 of complaint)
12.	Payment plan	New Payment Plan (No EMI) (Annexure R-2, Page no. 54 of reply)
13.	Total sale consideration	1. ₹84,08,638/- as stated in the complaint and as per apartment buyer's agreement provided in clause 2 (Page no.26 of complaint) 2. ₹83,80,605/- As per Annexure R-2 (Page no.54 of reply)
14.	Amount paid by the Allottee	1. ₹75,67,775/- According to the complainant 2. ₹76,52,285/- as per applicant file (Annexure R-2 on page no. 54 of reply)
15.	Due date of delivery of possession as per clause 15(a) of apartment buyer agreement	31.12.2012

	31.08.2012 with a grace period of 120 days, for applying and obtaining the occupation certificate in respect of the group housing complex	
16.	Delay in handing over possession till date	Possession not offered so far
17.	Status of project	Ongoing
18.	Specific relief sought (in specific terms)	To direct the respondent to pay delayed possession interest at prescribed rate of interest per annum for delayed period in handing over the possession and to handover the possession of the subject apartment.

3. As per clause 15(a) of the Apartment buyer's agreement the possession was to be handed over by 31.08.2012 plus grace 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(a) of the apartment buyer's 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 18 of the Act read with rules. Hence, this complaint for the 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. According to the respondent the delay in construction was for the reasons stated 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 based on these undisputed documents.
8. The Authority based on information and explanation and other submissions made and the documents filed by both the parties 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 stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and 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 documents and other record and submissions made by both the complainant and respondent 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. In this complaint the complainant had booked a residential unit no. 603, 6th floor, Tower-A in the project "The Edge Tower" sector 37D, Gurugram of the

respondent and he had already paid an amount of ₹75,67,775/- as per receipt information out of total consideration of ₹84,08,638/- as per apartment buyer's agreement including taxes. By virtue of clause 15(a) of apartment buyer's agreement executed between the parties on 24.09.2010, possession of the booked unit was to be delivered by 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 to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 24.09.2010 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) 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) 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 actual handing over the possession of the booked unit.

- 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 decision and subsequent interest to be paid by the 10th of each succeeding month.
- iv. Complaint stands disposed of. File be consigned to registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.12.2019
Judgement uploaded on 28.01.2020