

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

Complaint no. : 1015 of 2018
First date of hearing : 27.02.2019
Date of decision : 20.03.2019

Mr. Naveen Srivastava
R/o Flat: 903, tower B-2,
Parsavnath Exotica, Sector 53,
Gurugram-122002

Complainant

Versus

M/s Ramprastha Promoters and Developers
Private Ltd.
Regd. Office: C-10, C Block Market, Vasant
Vihar, New Delhi-110057.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Mr. Naveen Srivastava Complainant in person
None for the respondent Proceeded ex-parte

ORDER

1. A complaint dated 18.09.2018 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 Mr. Naveen

Srivastava against the promoter, M/s Ramprastha Promoters and Developers Private Ltd., on account of violation of the clause 11 of plot buyer's agreement executed on 05.08.2014 in respect of unit described below for not handing over possession by the due date i.e. 05.08.2017 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 18.09.2018. Notices w.r.t. hearing of the case were issued to the respondent **04.10.2018**, **29.10.2018** and **29.11.2018** for making his appearance. Besides this, a penalty of Rs. 5000/- and 10,000 was imposed for non-filing of reply even after service of notice. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on

merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

3. Since, the plot buyer's agreement has been executed on 05.08.2014 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 statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under: -

1.	Name and location of the project	Ramprastha City at Sector 37C and 37D, Gurugram.
2.	Nature of real estate project	Residential colony
3.	Plot no	106, A block
4.	Plot area	300 sq. yds.
5.	DTCP license no.	128 of 2012 dated 28.12.2012
6.	RERA registration status	Not registered
7.	Payment plan	Instalment linked plan
8.	Allotment letter	06.08.2014(as per annexure 9)
9.	Date of plot buyers agreement	05.08.2014

10.	Total consideration (as per annexure 1 of the plot buyer's agreement)	Rs. 66,30,000/-
11.	Total amount paid by the complainant till date as per receipts attached	Rs. 25,20,000/-
12.	Due date of delivery of possession (as per clause 11 of plot buyer's agreement : within 30 months + 6 months grace period from the date of execution of agreement)	05.08.2017
13.	Delay in handling over possession till date of decision	1 year 7 months 15 days
14.	Penalty clause as per clause 11 (c) of the plot buyer's agreement	Rs 90/- per sq. yard per month on the full area of the said plot

5. The details provided above have been checked as per record available in the case file. A plot buyer's agreement dated 05.08.2014 is available on record for the aforesaid plot according to which the possession of the same was to be delivered by 05.08.2017. Neither the respondent company has not delivered the possession till date and nor it has paid any compensation @ Rs.90/- per sq. yard per month for the period of such delay as per clause 11 (c) of plot buyer's agreement duly executed between the parties.

6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

Facts of the complaint:

7. The complainant was approached by the marketing department of the said builder. Typically, in order to lure the customers, the marketing department painted a very rosy picture about their promoters and project. They made number of calls and visits to sell their products. The complainant booked one plot measuring 300 sq. yards after paying the full amount. The Ramprastha Developers Pvt. Ltd. vide their provisional letter dated 24.04.2012 allotted him the plot.
8. Since April 2012, the complainant made a number of site visits and spoke to their marketing department and enquired from them why no zoning has been done to which the respondent said it would be done shortly.

9. After chasing for almost two and half years, the complainant was told to shift to their project Ramprastha City, Sector 37 C and 37 D by paying difference of the cost. Thereafter, the complainant received letter of welcome and allotment, both dated 06.08.2014 intimating the complainant that he has been allotted residential plot no. A-106, 300 sq. yards, in their project "Ramprastha City".
10. It has been 6 years now that the complainant has paid full payment for the earlier plot in April 2012 for which no zoning was done. Thereafter, the complainant paid the difference of cost and got a plot allotted in the abovementioned project. Despite having received the licence and payment, there is no zoning of plots and there is no development.

Issues raised by the complainant:

11. The issue raised by the complainant is as follows:-
- Whether the respondent has failed to deliver the possession of the allotted plot in due time as mentioned in the plot buyer's agreement issued by the respondent?

Relief sought:

17. The relief sought by the complainant is as follows:-

- i. The authority may kindly direct the respondent to allot plot to the complainant and complete the development work, without any delay.

Determination of issue:

18. After considering the facts submitted by the complainant, and perusal of record on file, the issues wise findings of the authority are as under: सत्यमेव जयते

- i. With respect to the **sole issue** raised by the complainants, the authority came across that as per clause 11 of plot buyer's agreement, the possession of the said plot was to be handed over within 30 months plus grace period of 6 months from the date of execution of agreement. The agreement was executed on 05.08.2014. Therefore, the due date of possession shall be computed from 05.08.2014. The clause regarding the possession of the said unit is reproduced below:

“Clause 11: Schedule for possession

The company shall endeavour to offer possession of the said plot within thirty months with another grace period of six month from the date of execution of this agreement subject to timely payment by the intending allottee of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan.”

Accordingly, the due date of possession was 05.08.2017 and the possession has been delayed by one year seven months and fifteen days till the date of decision. Thus, as per the said clause, the respondent was legally obliged to offer the possession to the complainant by the said date and the respondent has failed in fulfilling his obligation under 11(4) of the said Act.

Findings of the authority:

19. **Jurisdiction of the authority:** The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram

District. 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.

20. In this case, respondent has already been proceeded against ex-parte vide previous order dated 27.02.2019.

21. As per clause 11 of the plot buyer's agreement dated 05.08.2014 for plot no. 106, A block, admeasuring 300 square yards in project "Ramprastha city" Sector 37 C & Sector 37 D, Gurugram, possession was to be handed over to the complainant within a period of 30 months from the date of execution of agreement + 6 months grace period which comes out to be 05.08.2017. However, the respondent has not delivered the unit/plot in time. Complainant has already paid Rs. 61,20,000/- to the respondent against a total sale consideration of Rs. 66,30,000/- . As such, complaint is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 05.08.2017 as per the provision of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the possession.

Decision and directions of the authority:

22. 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 pay interest at the prescribed rate i.e. 10.75% per annum on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 05.08.2017 till date offer of possession.
- ii. The respondent is directed to pay the arrears of interest 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 month..

23. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the

respondent by the registration branch . A copy of this order be endorsed to registration branch

24. The complaint stands disposed of.
25. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 20.03.2019

Judgement Uploaded on 12.04.2019

