

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

**Complaint No. :** 2061 of 2018  
**First date of hearing :** 30.04.2019  
**Date of Decision :** 30.04.2019

1.Mr. Mukta Chadha  
2.Mr. Ashwani Kumar Chadha  
Both R/o. B-98,2<sup>nd</sup> floor, DDA Colony, Naraina  
Vihar, New Delhi

**Complainants**

Versus

M/s Ramprastha Promoters and Developers Pvt.  
Ltd.  
Regd. Office:C-10,C Block Market, Vasant Vihar,  
New Delhi: 110057.  
Also at plot no. 114, Sector 44,  
Gurugram- 122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sushil Yadav Advocate for the complainants  
Shri Dheeraj Kapoor Advocate for the respondent

**ORDER**

1. A complaint dated 04.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016

*Corrected vide order  
dated 12/06/19*

read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Mukta Chadha and Mr. Ashwani Kumar Chadha, against the promoter M/s Ramprasth Promoters and Developers Pvt. Ltd., in respect of unit no. E-1501, in the project 'RISE' located at sector 37-D , Gurugram for not executing the apartment buyer agreement and also not giving effect to the request of the complainants for cancellation of booking and refund of the paid amount, which is an obligation of the promoter/respondent under section 11 read with section 18 of the Act *ibid*.

2. Since, the apartment buyer agreement has been executed on 27.04.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

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

- **Nature of the project** : Group housing complex
- **RERA registered/unregistered** : Registered vide no. 278 of 2017
- **DTCP license no.:** 33 of 2008 dated 19.02.2008

1.	Name and location of the project	RISE, Sector 37-D Gurugram, Haryana.
2.	Flat/Unit no.	E-1501, 15 <sup>th</sup> floor
3.	Nature of real estate project	Group housing complex
4.	DTCP license no.	33 of 2008 dated 19.02.2008
5.	Measuring super area of the allotted unit	1825 sq. ft.
6.	RERA registered/unregistered	<b>Registered vide no. 278 of 2017</b>
7.	Revised date of completion as per registration certificate	<b>30.06.2019</b>
8.	Date of allotment letter	<b>19.05.2012</b>
9.	Date of execution of apartment buyer agreement	<b>27.04.2013</b>
10.	Total consideration(as per the allotment letter dated 19.05.2012)	Rs. 83,93,875/-
11.	Total amount paid by the complainant (as per the receipt attached)	Rs. 67,53,863/-
12.	Due date of delivery of possession as per apartment buyer agreement clause 15 to	01.02.2016

	hand over possession of the apartment by September 2015 plus grace period of 120 days	
13.	Delay in handing over possession	3years 2 months 29 days

4. The details provided above have been checked as per records available in the case file which has been provided by the complainant. An apartment buyer agreement dated 27.04.2013 is available on record for the aforesaid unit. As per clause 15 of the said agreement, the due date for handing over possession was 01.02.2016. Thus, the respondent has not fulfilled its committed liability as on date.

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 30.04.2019. The respondent has filed the reply on 09.04.2019 which has been perused by Authority.

**Facts of the complaint: -**

6. The complainants submitted that the respondent gave advertisement about the forthcoming project named

Ramaprastha "RISE" in sector 37-D by the complainants Mukta Chadha and Ashwani Kumar Chadha, booked an apartment/ flat admeasuring 1825 sq. ft. for total sale consideration of Rs. 86,20,121.

7. The complainants submitted that the complainants made payment of Rs. 67,53,865/- to the respondent vide different cheques on different dates.
8. The complainants submitted that the complainants as per apartment buyer agreement had allotted a unit/flat bearing no.1501 on 15<sup>th</sup> floor in tower-E having super area of 1825 sq.ft. to the complainants.
9. The complainants submitted that as per para no.15(a) of the apartment buyer agreement, the respondent had agreed to deliver the possession of the flat latest by September, 2015 as per the date of the said agreement dated 27.04.2013 with an grace period of 120 days.
10. The complainants submitted that the construction of the block in which the complainants flat was booked with a promise by the respondent to deliver the flat by September

2015 but was not completed within time for the reason best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently .

11. The complainants submitted that the complainants have been suffering from disruption on his living arrangement, mental torture, agony and also continue to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time. That as per clause 17(a) of the flat buyer agreement dated 27.04.2013, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @Rs.5/- per sq.ft. per month of the super area of the apartment.

**Issues to be decided: -**

1. Whether the respondents have deliberately delayed the possession of the flat as per the date of the apartment buyer agreement?

**Reliefs sought:-**

1. Direct the respondent to refund the full amount of Rs. 67,53,865/- along with prescribed interest on compounded rate from the date of booking of the plot in question.
2. Direct to quash and set-aside any other measures and steps threatened to be taken by the respondent qua the complainants or the property in question.

**Reply By Respondent:-**

12. The respondent submitted that the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint under rule-28 of the said rules and is seeking the relief of refund, interest and compensation u/s 18 of the said act. Therefore, even though the project of the respondent i.e. "RISE" Ramaprastha City, Sector-37D, Gurgaon is covered under the definition of "ongoing projects" and registered with this Hon'ble Regulatory Authority, the complaint, if any, is still required to be filed before the Adjudicating Officer under Rule-29 of the said Rules and not before this Hon'ble Regulatory Authority under Rule-28 as the Authority has no

jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

13. The respondent submitted that the complainant who are USA nationals and residing in USA at 16117 NW Fescue Court, Portland, Oregon-97229, USA were not present in India on the date of filing of the present complaint and have neither signed the complaint in India nor signed the affidavit or Vakalatnama in India, as alleged in their complaint, and the complainants be put to strict proof for the same.

14. The respondent submitted that the respondent has made huge investments in obtaining approvals and carrying on the construction and development of "RISE" project and despite several adversities is in the process of completing the construction of the project and should be able to apply the occupation certificate for the said apartment in question by 30.06.2019.

15. The respondent submitted that the respondent has continued with the construction of the project and is in the process of completing the construction of the project and should be



able to apply the occupation certificate for the apartment in question by 30.06.2019. The complainant was only a speculative investor and not interested in taking over the possession of the said apartment and because of slump in the real estate market, the complainant failed to make the payments in time.

16. The respondent submitted that it is apparent that the complainant is a mere short term and speculative investor who had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession, the complainant could not make the payments in time and have now developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted and frivolous litigation.

17. The respondent submitted that the complainant persuaded the respondent to allot the said apartment in question to him with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and



construction of the said apartment and also had to incur interest liability towards its bankers. The complainant prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainant.

18. The respondent submitted that it was the complainant who had approached the respondent for investing in a apartment and the complainant has not relied upon and is not influenced by any brochures, advertisements, representations, etc. and it was only after fully satisfying himself about the interest and entitlement of the respondent in the said project and after having gathered and understood detailed information about the said project, and after completely satisfying himself about all aspects of the said project and after a careful consideration had applied for booking of the said apartment.
19. The respondent submitted that the proposed estimated time of handing over the possession of the said apartment i.e.



September 2015+ 120 days, which comes to 31.01.2016, is applicable only subject to force majeure and the complainant having complied with all the terms and conditions of the apartment buyer agreement, including but not limited to the payments of instalments. In case of nay default/delay in payment, the date of handing over of possession shall be extended accordingly solely at the respondent's discretion, till the payment of all outstanding amounts and at the same time in case of any default, the complainant will not be entitled to any compensation whatsoever.

20. The respondent submitted that the complainant has been a defaulter, having deliberately failed to make the payment of instalments within the time prescribed, which resulted in delay payment charges/interest. Therefore, the complainant is neither entitled to nor does it lie in the mouth of the complainant to raise the issue of delay in handing over possession and take advantages of their own wrongs.

**Determination of issues :-**

After considering the facts submitted by the complainants and perusal of record on file, the issue wise findings of the authority are given below:

1. With respect to the **first issue** raised by the complainants, as per clause 15(a) of apartment buyer agreement dated 27.04.2013, the possession of the flat was to be handed over by September,2015 + grace period of 120 days has been given to the respondent due to exigencies beyond its control. Therefore, the due date of handing over the possession shall be computed from date of apartment buyer agreement i.e., from 27.04.2013. The delay compensation payable by the respondent as per clause 17 @ Rs.5/- per sq. ft per month of the super area of the said flat for the period of further delay which is unjust in nature. The terms of the apartment buyer agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.*

**(W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

***“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”***

Accordingly, the due date of possession was **01.02.2016** and the possession has been delayed by 3 years 2 months 29 days till the date of decision. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the rules *ibid*, to pay interest to the complainants, at the prescribed rate for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the complainants with the promoter from the due date of possession i.e. 01.02.2016 till date of decision.

**Findings and directions of the authority:-**

21. 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 commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.
22. 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.
23. The possession was to be handed over to the complainants September,2015 from the date of signing of apartment buyer agreement plus 120 days grace period and due date comes to be 01.02.2016.

However, the respondent has not delivered the unit in time. As such, the complainants are entitled to delayed possession charges at the prescribed rate of 10.70% per annum w.e.f.01.02.2016 till the offer of possession as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act,2016.

Arguments Heard:

24. The following directions were directed during the proceedings:

- a. As per clause 15 of the apartment buyer agreement dated 27.04.2013 for unit no. E-1501, 15<sup>th</sup> floor, in project "Rise" Sector-37-D, Gurugram, possession was to be handed over to the complainant by September 2015+120 days grace period which comes out to be 01.02.2016. However, the respondent has not delivered the unit in time.
- b. Complainants have already paid Rs.67,53,863/- to the respondent against a total sale consideration of Rs.83,93,875/-.

c. Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f. 01.02.2016 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

**Decision and directions of the authority:-**

25. 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:-

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from due date of possession i.e. 01.02.2016 till the offer of the possession on account of delay in handing over of possession to the complainants within 90 days from the date of issuance of this order.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed possession.



- iii. The respondent is directed not to charge anything from the complainant which is not the part of the apartment buyer agreement.
- iv. The respondent is further directed to charge interest on the due payments from the complainants at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

26. The order is pronounced.

27. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

Dated.30.04.2019

**Corrected judgement uploaded on 04.07.2019**

**BEFORE THE HARYANA REAL ESTATE  
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**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sushil Yadav Advocate for the complainants  
Shri Dheeraj Kapoor Advocate for the respondent

**ORDER**

1. A complaint dated 04.12.2018 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 complainants Mr. Mukta

Chadha and Mr. Ashwani Kumar Chadha, against the promoter M/s Ramprasth Promoters and Developers Pvt. Ltd., in respect of unit no. E-1501, in the project 'RISE' located at sector 37-D , Gurugram for not executing the apartment buyer agreement and also not giving effect to the request of the complainants for cancellation of booking and refund of the paid amount, which is an obligation of the promoter/respondent under section 11 read with section 18 of the Act *ibid.*

2. Since, the apartment buyer agreement has been executed on 27.04.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid.*

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

- **Nature of the project** : Group housing complex

- **RERA registered/unregistered** : Registered vide no. 278 of 2017
- **DTCP license no.:** 33 of 2008 dated 19.02.2008

1.	Name and location of the project	RISE, Sector 37-D Gurugram, Haryana.
2.	Flat/Unit no.	E-1501, 15 <sup>th</sup> floor
3.	Nature of real estate project	Group housing complex
4.	DTCP license no.	33 of 2008 dated 19.02.2008
5.	Measuring super area of the allotted unit	1825 sq. ft.
6.	RERA registered/unregistered	<b>Registered vide no. 278 of 2017</b>
7.	Revised date of completion as per registration certificate	<b>30.06.2019</b>
8.	Date of allotment letter	<b>19.05.2012</b>
9.	Date of execution of apartment buyer agreement	<b>27.04.2013</b>
10.	Total consideration(as per the allotment letter dated 19.05.2012)	Rs. 83,93,875/-
11.	Total amount paid by the complainant (as per the receipt attached)	Rs. 67,53,863/-
12.	Due date of delivery of possession as per apartment buyer agreement clause 15 to hand over possession of the apartment by September 2015 plus grace period of 120 days	01.02.2016
13.	Delay in handing over possession	3years 2 months 29 days

4. The details provided above have been checked as per records available in the case file which has been provided by the complainant. An apartment buyer agreement dated 27.04.2013 is available on record for the aforesaid unit. As per clause 15 of the said agreement, the due date for handing over possession was 01.02.2016. Thus, the respondent has not fulfilled its committed liability as on date.

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 30.04.2019. 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 proceeding had been initiated against the respondent.

**Facts of the complaint:-**

6. The complainants submitted that the respondent gave advertisement about the forthcoming project named Ramaprastha "RISE" in sector 37-D by the complainants Mukta Chadha and Ashwani Kumar Chadha, booked an

apartment/ flat admeasuring 1825 sq. ft. for total sale consideration of Rs. 86,20,121.

7. The complainants submitted that the complainants made payment of Rs. 67,53,865/- to the respondent vide different cheques on different dates.
8. The complainants submitted that the complainants as per apartment buyer agreement had allotted a unit/flat bearing no.1501 on 15<sup>th</sup> floor in tower-E having super area of 1825 sq.ft. to the complainants.
9. The complainants submitted that as per para no.15(a) of the apartment buyer agreement, the respondent had agreed to deliver the possession of the flat latest by September, 2015 as per the date of the said agreement dated 27.04.2013 with an grace period of 120 days.
10. The complainants submitted that the construction of the block in which the complainants flat was booked with a promise by the respondent to deliver the flat by September 2015 but was not completed within time for the reason best know to the respondent, which clearly shows that ulterior

motive of the respondent was to extract money from the innocent people fraudulently .

11. The complainants submitted that the complainants have been suffering from disruption on his living arrangement, mental torture, agony and also continue to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time. That as per clause 17(a) of the flat buyer agreement dated 27.04.2013, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @Rs.5/- per sq.ft. per month of the super area of the apartment.

**Issues to be decided: -**

1. Whether the respondents have deliberately delayed the possession of the flat as per the date of the apartment buyer agreement?

**Reliefs sought:-**

1. Direct the respondent to refund the full amount of Rs. 67,53,865/- along with prescribed interest on compounded rate from the date of booking of the plot in question.

2. Direct to quash and set-aside any other measures and steps threatened to be taken by the respondent qua the complainants or the property in question.

**Determination of issues :-**

After considering the facts submitted by the complainants and perusal of record on file, the issue wise findings of the authority are given below:

1. With respect to the **first issue** raised by the complainants, as per clause 15(a) of apartment buyer agreement dated 27.04.2013, the possession of the flat was to be handed over by September,2015 + grace period of 120 days has been given to the respondent due to exigencies beyond its control. Therefore, the due date of handing over the possession shall be computed from date of apartment buyer agreement i.e., from 27.04.2013. The delay compensation payable by the respondent as per clause 17 @ Rs.5/- per sq. ft per month of the super area of the said flat for the period of further delay which is unjust in nature. The terms of the apartment buyer agreement have been drafted mischievously by the respondent



and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

***“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”***

Accordingly, the due date of possession was **01.02.2016** and the possession has been delayed by 3 years 2 months 29 days till the date of decision. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act ibid read with rule 15 of the rules ibid, to pay interest to the complainants, at the prescribed rate for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the

complainants with the promoter from the due date of possession i.e. 01.02.2016 till date of decision.

**Findings and directions of the authority:-**

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

13. 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.

14. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional

time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.

15. Such notices were issued to the respondent on 07.12.2018 and on 19.12.2018 and on 04.01.2019.

16. The possession was to be handed over to the complainants September, 2015 from the date of signing of apartment buyer agreement plus 120 days grace period and due date comes to be 01.02.2016.

However, the respondent has not delivered the unit in time. As such, the complainants are entitled to delayed possession charges at the prescribed rate of 10.70% per annum w.e.f. 01.02.2016 till the offer of possession as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

Arguments Heard:

30. The following directions were directed during the proceedings:

- a. As per clause 15 of the apartment buyer agreement dated 27.04.2013 for unit no. E-1501, 15<sup>th</sup> floor, in project “Rise” Sector-37-D, Gurugram, possession was to be handed over to the complainant by September 2015+120 days grace period which comes out to be 01.02.2016. However, the respondent has not delivered the unit in time.
- b. Complainants have already paid Rs.67,53,863/- to the respondent against a total sale consideration of Rs.83,93,875/-.
- c. Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f. 01.02.2016 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

**Decision and directions of the authority:-**

17. 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:-

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from due date of possession i.e. 01.02.2016 till the offer of the possession on account of delay in handing over of possession to the complainants within 90 days from the date of issuance of this order.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed possession.
- iii. The respondent is directed not to charge anything from the complainant which is not the part of the apartment buyer agreement.
- iv. The respondent is further directed to charge interest on the due payments from the complainants at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

18. The order is pronounced.

19. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

Dated.30.04.2019

Judgement uploaded on 28.05.2019



**HARERA**  
GURUGRAM