

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

**Complaint No. : 1669 of
2018**

**Date of First
Hearing : 28.02.2019
Date of Decision : 28.02.2019**

Agrawal
Mrs. Priyanka ~~Agarwal~~
Mr. Sanchit ~~Agarwal~~ *Agrawal*
R/o 25/1, H Block, DLF City Phase 1, Near **Complainants**
Gurudwara, Gurugram, Haryana-122002

Versus

M/s Ramprastha Promoters and Developers
Registered Office: Plot no. 114, Sector-44,
Gurugram, Haryana-122002
M/s Blue Bell Proptech Pvt. Ltd. **Respondent**
Registered office: C-10, C Block Market, Vasant
Vihar, New Delhi-110057

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Nitopal Shyam, and Ms. **Advocates for the complainant**
Shivani
Shri Shobhit Maheshwari, **Advocate for the respondent**
authorized representative
with Shri Dheeraj Kapoor

*Corrected vide order
dated 05/07/19.*





ORDER

1. A complaint dated 05.11.2018 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 Mrs. Priyanka ~~Agarwal~~ ^{Agarwal} and Mr. Sanchit ~~Agarwal~~ ^{Agarwal}, against the promoter M/s Ramprastha Promoters and Developers and another in respect of apartment/unit described below in the project 'Skyz', on account of violation of the section 11(4)(a) of the Act *ibid*.
2. Since, the apartment buyer agreement has been executed on 12.09.2011 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Skyz", Sector-37-D, Gurugram
2.	Nature of real estate project	Group Housing complex
3.	Project area	60.5112 acres
4.	Unit no.	802, 8 th floor, tower-E

Corrected vide order dated 05/07/19.





5.	Registered/ un registered	Registered
6.	Registration no.	320 of 2017
7.	Revised date of completion	31.03.2019
8.	DTCP license no.	33 of 2008 dated 19.02.2008
9.	Allotment letter	06.09.2019 06.09.2011
10.	Total area of the allotted unit no.	1750 sq.ft.
11.	Date of apartment buyer agreement	12.09.2011
12.	Basic sales consideration amount as per the agreement, clause 2(a)(i)	Rs 75,11,071/-
13.	Total amount paid by the complainants	Rs. 68,79,114 /-
14.	Date of delivery of possession from the date of execution of apartment buyer agreement	31.12.2014 Clause 15(a)- the developer proposes to hand over the possession of the apartment by 31.08.2014, with a grace period of 120 days
15.	Delay for number of months/ years upto date	4 years 1 month 28 days
16.	Penalty clause as per apartment buyer agreement dated 12.09.2011	Clause 17(a) i.e. Rs. 5/- per sq.ft. per month of the super area till the



Corrected vide orders
dated 05/07/19.

		date of possession.
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4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. An apartment buyer agreement dated 12.09.2011 is available on record for the aforementioned apartment according to which the possession was to be delivered on 31.12.2014. Neither the respondent have delivered the possession as per the terms of the apartment buyer agreement nor paid any compensation i.e. @ Rs. 5/- per sq. ft. per month of the super area till the date of possession as per apartment buyer agreement duly executed between the parties. Therefore, the promoters have failed to fulfil their committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared on 28.02.2019. The case came up for hearing on 28.02.2019. The reply was filed by the respondents on 20.12.2018 which has been perused. The rejoinder has been filed on 28.02.2019 wherein they have re-asserted the contentions raised in the complaint



Facts of the complaint

6. Briefly stating the facts of the complaint, the respondents gave advertisement in various leading newspapers about their forthcoming project named Ramprastha "SKYZ" in Sector 37-D, Gurugram promising various advantages, like world class amenities and timely completion etc.
7. Based on representation and other independent enquiries, the complainant no. 2, Mr. Sudhanshu Agrawal and Mr. Manoj Kumar Gupta booked the unit no. E-802 in the impugned project under no EMI payment plan by paying a booking amount of Rs. 11,27,236/- and agreed to pay the balance consideration as per the payment plan annexed to the agreement for sale which was to made at the earliest.
8. Pursuant to the payment of booking amount to the respondents, the allotment letter dated 06.09.2011 was issued by the respondent wherein the total consideration for the impugned unit No. E-802 was fixed at Rs.75,11,071/-.
9. An apartment buyer was entered into and executed on 12.09.2011 between M/s Ramprastha Promoters and Developers Pvt. Ltd (as first part- respondent no.1), M/s Blue Bell Propotech Pvt. Ltd and Mr. Sanchit Agarwal jointly with Mr.



Sudhanshu Agarwal & Mr. Manoj Gupta for unit no. E-802 in the said project.

10. As per agreement, the respondents agreed to sell the apartment unit no. E-802, eighth floor, tower E in the complex with the right to exclusive use of parking space for an amount of Rs.75,11,071/- calculated at Rs. 4,292.04/- per sq.ft. super area, which includes basic sale price, car parking charges, external development charges and infrastructure development charges, preferential location charges and interest free maintenance security and in addition to, club membership, electricity connection, as per payment plan in accordance with the agreement and in accordance with law in force, plus applicable taxes.

11. The names of Mr. Sudhanshu Agrawal and Mr. Manoj Kumar Gupta were deleted from the agreement and finally the name of complaint no.1 was added to it, with due consent/endorsement of respondent on such deletion as well as addition. Accordingly, the respondents also endorsed the name of complaint no.1 on the allotment letter.

12. The complainants already paid an amount of Rs. 68,79,114/- till now towards the payment of consideration of the unit. The complainants have paid 90% of the sale consideration towards



the cost of the unit E-802 in the impugned project by 22.12.2011 itself though they remained a tenant in DLF City Phase I, near Gurudwara, Gurugram with rented accommodation since the execution of agreement.

13. The said compensation clause is ex facie discriminatory in comparison to clause 14(a) of the agreement and amounts to unfair trade practices in view of catena of judgments of Hon'ble National Consumer Disputes Redressal Commission. Further, the said compensation clause is also in direct conflict with the RERA, 2016 and rules made there under. Therefore, the clause 17 of agreement is *non est* in law in view of the fact that it is repugnant to the explicit statutory provision and to that extant clause 17 is severable from other clauses of ABA in accordance with clause 30 of the ABA.

14. To the utter dismay and in complete disregard to the interests of the complainants, the respondents vide another email dated 28.02.2017 intimated a new deadline for completion date of the impugned unit as March, 2018. The respondents again miserably failed to afford reasons for such delay caused in the completion of the said unit. The respondents again breached the third deadline given for the completion of construction and it gave a new deadline i.e. 31.03.2019 for handing over the



- possession before hon'ble authority while seeking registration in accordance with the RERA, 2016. The said deadline was accepted by hon'ble authority for the purposes of giving RERA registration subject to terms and condition which *inter alia* includes the right of the complainants to withdraw from the project and to seek refund of money paid along with interest from the date of payments.
15. No tangible development in the construction of the impugned project has taken place after April, 2017. Further, there has been no construction update of the project on the respondents website after 20.04.2017 which is in itself a violation of the RERA, 2016 as well as rules/notifications made there-under.
16. The complainants no longer wish to continue in the impugned project as the respondents have nothing but false assurances with regard to the actual date of handing over the possession of the unit. Therefore, the complainants wish to withdraw from the project in view of the foregoing circumstances and demand the refund of money paid along with the applicable interest from the respondents.



17. Issues raised by the complainants:

- I. Whether the respondent have breached their obligation to deliver the possession in accordance with the agreement for sale?
- II. Whether the respondents are liable to refund the money paid by the complainants along with interest at prescribed rate?

18. Relief sought

- I. Direct the respondents to deliver the possession of the said unit provided in the RERA registration certificate along interest for the delayed period of handing over the possession calculated from the date of delivery of possession.

Respondent's reply

19. The respondents stated that the present complaint is not maintainable in law or facts. The hon'ble authority has no jurisdiction to entertain the present complaint. The respondent submitted that according to Section 17 of the Act, the complaint pertaining to compensation and interest under section 12,14,18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 is maintainable only before the



adjudicating officer under rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble authority under rule-28.

20. The respondents submitted that even though the project of the respondent is covered under the definition of "ongoing projects" u/r 2(1)(o) of HARERA Rules, 2017 . The complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before the hon'ble authority under rule 28.

21. The respondent submitted that the statement of objects and reasons of the said Act clearly states that the RERA is enacted for effective consumer protection. The RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" u/s 2(d) as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not consumers. The complainants, have filed the present complaint where the complainants through their family members have also invested in one more flat no. N-304 in another project of the respondents i.e "The Edge Towers" for which their family members have filed a separate complaint





no. 1670/2018 which is also pending adjudication before the authority , are investors, having invested in 2 more flats in two projects of the projects of the respondents and who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on frivolous grounds.

22. The respondents submitted that in the present complaint, the complainants never raised any issue whatsoever and has now concocted a false story. It is further submitted that the respondent have continued with the construction of the project and is in the process of completing the construction of the project and will be able to apply the occupation certificate for the apartment in question by 31.03.2019.
23. The respondent submitted that they have developed various projects and has completed those projects. The respondents have obtained occupancy certificates in majority of its projects. They have been diligent in completing all it projects and will be completing the projects in phased manner.
24. The respondents submitted that the complainants from the date of booking till the filing of the present complaint, never raised any issue and is now unnecessarily raising false and frivolous issues and has filed the present complaint.



25. It is submitted by the respondent that the hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainant has not come to the authority with clean hands and has concealed the material facts.

Determination of issues

26. In regard to the **first issue** raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date i.e 31.12.2014 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession..

27. The **second issue** raised by the complainants, the respondents contended that the possession will be given to the complainants by 31.03.2019 so refund cannot be initiated and whereas the respondent in its reply states that the promoter is in the process of completing the project and will be able to apply for occupational certificate by 31.03.2019, and initiating of refund this stage will hamper the interest of other allottees



28. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

"34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

29. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

"37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

Findings of the authority

30. The respondent admitted the fact that the project Skyz is situated in Sector-37-D, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

31. **Jurisdiction of the authority-** The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. 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 complainants at a later stage.

32. The complainants by an application for amendment of complaint reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

33. The authority is of the view that the respondent was bound to deliver the possession 31.12.2014 but the respondent has not delivered the unit to the complainants till date.



Decision and directions of the authority

34. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondents are directed to deliver the possession to the complainants by 31.03.2019.
- (ii) The respondents are directed to pay the complainant interest for the period of delayed possession at the prescribed rate i.e 10.75% w.e.f 31.12.2014 till the offer of possession.
- (iii) The interest so accrued shall be paid by the respondents within a period of 90 days from the date of the order and subsequent interest shall be paid on the 10th of every month.

35. The complaint is disposed off accordingly.

36. The order is pronounced.



37. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.02.2019

Corrected Judgement uploaded on 23.07.2019



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APPEARANCE:

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Advocates for the complainant

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Advocate for the respondent

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2. Since, the apartment buyer agreement has been executed on 12.09.2011 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 contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Skyz", Sector-37-D, Gurugram
2.	Nature of real estate project	Group Housing complex
3.	Project area	60.5112 acres
4.	Unit no.	802, 8 th floor, tower-E





5.	Registered/ un registered	Registered
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7.	Revised date of completion	31.03.2019
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Facts of the complaint

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12. The complainants already paid an amount of Rs. 68,79,114/- till now towards the payment of consideration of the unit. The complainants have paid 90% of the sale consideration towards



the cost of the unit E-802 in the impugned project by 22.12.2011 itself though they remained a tenant in DLF City Phase I, near Gurudwara, Gurugram with rented accommodation since the execution of agreement.

13. The said compensation clause is ex facie discriminatory in comparison to clause 14(a) of the agreement and amounts to unfair trade practices in view of catena of judgments of Hon'ble National Consumer Disputes Redressal Commission. Further, the said compensation clause is also in direct conflict with the RERA, 2016 and rules made there under. Therefore, the clause 17 of agreement is *non est* in law in view of the fact that it is repugnant to the explicit statutory provision and to that extant clause 17 is severable from other clauses of ABA in accordance with clause 30 of the ABA.

14. To the utter dismay and in complete disregard to the interests of the complainants, the respondents vide another email dated 28.02.2017 intimated a new deadline for completion date of the impugned unit as March, 2018. The respondents again miserably failed to afford reasons for such delay caused in the completion of the said unit. The respondents again breached the third deadline given for the completion of construction and it gave a new deadline i.e. 31.03.2019 for handing over the



possession before hon'ble authority while seeking registration in accordance with the RERA, 2016. The said deadline was accepted by hon'ble authority for the purposes of giving RERA registration subject to terms and condition which *inter alia* includes the right of the complainants to withdraw from the project and to seek refund of money paid along with interest from the date of payments.

15. No tangible development in the construction of the impugned project has taken place after April, 2017. Further, there has been no construction update of the project on the respondents website after 20.04.2017 which is in itself a violation of the RERA, 2016 as well as rules/notifications made there-under.

16. The complainants no longer wish to continue in the impugned project as the respondents have nothing but false assurances with regard to the actual date of handing over the possession of the unit. Therefore, the complainants wish to withdraw from the project in view of the foregoing circumstances and demand the refund of money paid along with the applicable interest from the respondents.



17. Issues raised by the complainants:

- I. Whether the respondent have breached their obligation to deliver the possession in accordance with the agreement for sale?
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18. Relief sought

- I. Direct the respondents to deliver the possession of the said unit provided in the RERA registration certificate along interest for the delayed period of handing over the possession calculated from the date of delivery of possession.

Respondent's reply

19. The respondents stated that the present complaint is not maintainable in law or facts. The hon'ble authority has no jurisdiction to entertain the present complaint. The respondent submitted that according to Section 17 of the Act, the complaint pertaining to compensation and interest under section 12,14,18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 is maintainable only before the



adjudicating officer under rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble authority under rule-28.

20. The respondents submitted that even though the project of the respondent is covered under the definition of "ongoing projects" u/r 2(1)(o) of HARERA Rules, 2017 . The complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before the hon'ble authority under rule 28.

21. The respondent submitted that the statement of objects and reasons of the said Act clearly states that the RERA is enacted for effective consumer protection. The RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" u/s 2(d) as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not consumers. The complainants, have filed the present complaint where the complainants through their family members have also invested in one more flat no. N-304 in another project of the respondents i.e "The Edge Towers" for which their family members have filed a separate complaint



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22. The respondents submitted that in the present complaint, the complainants never raised any issue whatsoever and has now concocted a false story. It is further submitted that the respondent have continued with the construction of the project and is in the process of completing the construction of the project and will be able to apply the occupation certificate for the apartment in question by 31.03.2019.
23. The respondent submitted that they have developed various projects and has completed those projects. The respondents have obtained occupancy certificates in majority of its projects. They have been diligent in completing all it projects and will be completing the projects in phased manner.
24. The respondents submitted that the complainants from the date of booking till the filing of the present complaint, never raised any issue and is now unnecessarily raising false and frivolous issues and has filed the present complaint.



25. It is submitted by the respondent that the hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainant has not come to the authority with clean hands and has concealed the material facts.

Determination of issues

26. In regard to the **first issue** raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date i.e 31.12.2014 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession..

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28. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

"34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

29. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

"37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

Findings of the authority

30. The respondent admitted the fact that the project Skyz is situated in Sector-37-D, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

31. **Jurisdiction of the authority-** The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. 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 complainants at a later stage.

32. The complainants by an application for amendment of complaint reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

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Decision and directions of the authority

34. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondents are directed to deliver the possession to the complainants by 31.03.2019.
- (ii) The respondents are directed to pay the complainant interest for the period of delayed possession at the prescribed rate i.e 10.75% w.e.f 31.12.2014 till the offer of possession.
- (iii) The interest so accrued shall be paid by the respondents within a period of 90 days from the date of the order and subsequent interest shall be paid on the 10th of every month.


35. The complaint is disposed off accordingly.

36. The order is pronounced.



37. Case file be consigned to the registry.

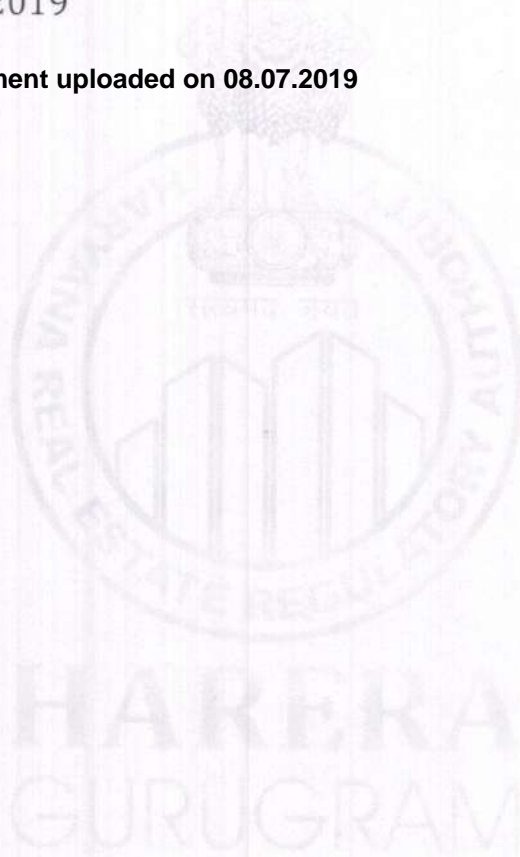

(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.02.2019

Corrected Judgement uploaded on 08.07.2019



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

**Complaint No. : 1669 of
2018**
**Date of First
Hearing : 28.02.2019**
Date of Decision : 28.02.2019

Mrs. Priyanka Agarwal
Mr. Sanchit Agarwal
R/o 25/1, H Block, DLF City Phase 1, Near
Gurudwara, Gurugram, Haryana-122002

Complainants

Versus

M/s Ramprastha Promoters and Developers
Registered Office: Plot no. 114, Sector-44,
Gurugram, Haryana-122002
M/s Blue Bell Proptech Pvt. Ltd.
Registered office: C-10, C Block Market, Vasant
Vihar, New Delhi-110057

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Nitopal Shyam, and Ms.
Shivani
Shri Shobhit Maheshwari,
authorized representative
with Shri Dheeraj Kapoor

Advocates for the complainant
Advocate for the respondent



ORDER

1. A complaint dated 05.11.2018 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 Mrs. Priyanka Agarwal and Mr. Sanchit Agarwal, against the promoter M/s Ramprastha Promoters and Developers and another in respect of apartment/unit described below in the project 'Skyz', on account of violation of the section 11(4)(a) of the Act ibid.
2. Since, the apartment buyer agreement has been executed on 12.09.2011 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Skyz", Sector-37-D, Gurugram
2.	Nature of real estate project	Group Housing complex
3.	Project area	60.5112 acres
4.	Unit no.	802, 8 th floor, tower-E



5.	Registered/ un registered	Registered
6.	Registration no.	320 of 2017
7.	Revised date of completion	31.03.2019
8.	DTCP license no.	33 of 2008 dated 19.02.2008
9.	Allotment letter	06.09.2019
10.	Total area of the allotted unit no.	1750 sq.ft.
11.	Date of apartment buyer agreement	12.09.2011
12.	Basic sales consideration amount as per the agreement, clause 2(a)(i)	Rs 75,11,071/-
13.	Total amount paid by the complainants	Rs. 68,79,114 /-
14.	Date of delivery of possession from the date of execution of apartment buyer agreement	31.12.2014 Clause 15(a)- the developer proposes to hand over the possession of the apartment by 31.08.2014, with a grace period of 120 days
15.	Delay for number of months/ years upto date	4 years 1 month 28 days
16.	Penalty clause as per apartment buyer agreement dated 12.09.2011	Clause 17(a) i.e. Rs. 5/- per sq.ft. per month of the super area till the



		date of possession.
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4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. An apartment buyer agreement dated 12.09.2011 is available on record for the aforementioned apartment according to which the possession was to be delivered on 31.12.2014. Neither the respondent have delivered the possession as per the terms of the apartment buyer agreement nor paid any compensation i.e. @ Rs. 5/- per sq. ft. per month of the super area till the date of possession as per apartment buyer agreement duly executed between the parties. Therefore, the promoters have failed to fulfil their committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared on 28.02.2019. The case came up for hearing on 28.02.2019. The reply was filed by the respondents on 20.12.2018 which has been perused. The rejoinder has been filed on 28.02.2019 wherein they have re-asserted the contentions raised in the complaint



Facts of the complaint

6. Briefly stating the facts of the complaint, the respondents gave advertisement in various leading newspapers about their forthcoming project named Ramprastha "SKYZ" in Sector 37-D, Gurugram promising various advantages, like world class amenities and timely completion etc.
7. Based on representation and other independent enquiries, the complainant no. 2, Mr. Sudhanshu Agrawal and Mr. Manoj Kumar Gupta booked the unit no. E-802 in the impugned project under no EMI payment plan by paying a booking amount of Rs. 11,27,236/- and agreed to pay the balance consideration as per the payment plan annexed to the agreement for sale which was to made at the earliest.
8. Pursuant to the payment of booking amount to the respondents, the allotment letter dated 06.09.2011 was issued by the respondent wherein the total consideration for the impugned unit No. E-802 was fixed at Rs.75,11,071/-.
9. An apartment buyer was entered into and executed on 12.09.2011 between M/s Ramprastha Promoters and Developers Pvt. Ltd (as first part- respondent no.1), M/s Blue Bell Proptech Pvt. Ltd and Mr. Sanchit Agarwal jointly with Mr.



Sudhanshu Agarwal & Mr. Manoj Gupta for unit no. E-802 in the said project.

10. As per agreement, the respondents agreed to sell the apartment unit no. E-802, eighth floor, tower E in the complex with the right to exclusive use of parking space for an amount of Rs.75,11,071/- calculated at Rs. 4,292.04/- per sq.ft. super area, which includes basic sale price, car parking charges, external development charges and infrastructure development charges, preferential location charges and interest free maintenance security and in addition to, club membership, electricity connection, as per payment plan in accordance with the agreement and in accordance with law in force, plus applicable taxes.

11. The names of Mr. Sudhanshu Agrawal and Mr. Manoj Kumar Gupta were deleted from the agreement and finally the name of complaint no.1 was added to it, with due consent/endorsement of respondent on such deletion as well as addition. Accordingly, the respondents also endorsed the name of complaint no.1 on the allotment letter.

12. The complainants already paid an amount of Rs. 68,79,114/- till now towards the payment of consideration of the unit. The complainants have paid 90% of the sale consideration towards



the cost of the unit E-802 in the impugned project by 22.12.2011 itself though they remained a tenant in DLF City Phase I, near Gurudwara, Gurugram with rented accommodation since the execution of agreement.

13. The said compensation clause is ex facie discriminatory in comparison to clause 14(a) of the agreement and amounts to unfair trade practices in view of catena of judgments of Hon'ble National Consumer Disputes Redressal Commission. Further, the said compensation clause is also in direct conflict with the RERA, 2016 and rules made there under. Therefore, the clause 17 of agreement is *non est* in law in view of the fact that it is repugnant to the explicit statutory provision and to that extant clause 17 is severable from other clauses of ABA in accordance with clause 30 of the ABA.

14. To the utter dismay and in complete disregard to the interests of the complainants, the respondents vide another email dated 28.02.2017 intimated a new deadline for completion date of the impugned unit as March, 2018. The respondents again miserably failed to afford reasons for such delay caused in the completion of the said unit. The respondents again breached the third deadline given for the completion of construction and it gave a new deadline i.e. 31.03.2019 for handing over the



possession before hon'ble authority while seeking registration in accordance with the RERA, 2016. The said deadline was accepted by hon'ble authority for the purposes of giving RERA registration subject to terms and condition which *inter alia* includes the right of the complainants to withdraw from the project and to seek refund of money paid along with interest from the date of payments.

15. No tangible development in the construction of the impugned project has taken place after April, 2017. Further, there has been no construction update of the project on the respondents website after 20.04.2017 which is in itself a violation of the RERA, 2016 as well as rules/notifications made there-under.

16. The complainants no longer wish to continue in the impugned project as the respondents have nothing but false assurances with regard to the actual date of handing over the possession of the unit. Therefore, the complainants wish to withdraw from the project in view of the foregoing circumstances and demand the refund of money paid along with the applicable interest from the respondents.



17. Issues raised by the complainants:

- I. Whether the respondent have breached their obligation to deliver the possession in accordance with the agreement for sale?
- II. Whether the respondents are liable to refund the money paid by the complainants along with interest at prescribed rate?

18. Relief sought

- I. Direct the respondents to deliver the possession of the said unit provided in the RERA registration certificate along interest for the delayed period of handing over the possession calculated from the date of delivery of possession.

Respondent's reply

19. The respondents stated that the present complaint is not maintainable in law or facts. The hon'ble authority has no jurisdiction to entertain the present complaint. The respondent submitted that according to Section 17 of the Act, the complaint pertaining to compensation and interest under section 12,14,18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 is maintainable only before the



adjudicating officer under rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble authority under rule-28.

20. The respondents submitted that even though the project of the respondent is covered under the definition of "ongoing projects" u/r 2(1)(o) of HARERA Rules, 2017 . The complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before the hon'ble authority under rule 28.

21. The respondent submitted that the statement of objects and reasons of the said Act clearly states that the RERA is enacted for effective consumer protection. The RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" u/s 2(d) as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not consumers. The complainants, have filed the present complaint where the complainants through their family members have also invested in one more flat no. N-304 in another project of the respondents i.e "The Edge Towers" for which their family members have filed a separate complaint



no. 1670/2018 which is also pending adjudication before the authority , are investors, having invested in 2 more flats in two projects of the projects of the respondents and who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on frivolous grounds.

22. The respondents submitted that in the present complaint, the complainants never raised any issue whatsoever and has now concocted a false story. It is further submitted that the respondent have continued with the construction of the project and is in the process of completing the construction of the project and will be able to apply the occupation certificate for the apartment in question by 31.03.2019.
23. The respondent submitted that they have developed various projects and has completed those projects. The respondents have obtained occupancy certificates in majority of its projects. They have been diligent in completing all it projects and will be completing the projects in phased manner.
24. The respondents submitted that the complainants from the date of booking till the filing of the present complaint, never raised any issue and is now unnecessarily raising false and frivolous issues and has filed the present complaint.



25. It is submitted by the respondent that the hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainant has not come to the authority with clean hands and has concealed the material facts.

Determination of issues

26. In regard to the **first issue** raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date i.e 31.12.2014 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession..

27. The **second issue** raised by the complainants, the respondents contended that the possession will be given to the complainants by 31.03.2019 so refund cannot be initiated and whereas the respondent in its reply states that the promoter is in the process of completing the project and will be able to apply for occupational certificate by 31.03.2019, and initiating of refund this stage will hamper the interest of other allottees



28. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

“34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

29. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

“37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”



Findings of the authority

30. The respondent admitted the fact that the project Skyz is situated in Sector-37-D, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

31. **Jurisdiction of the authority-** The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. 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 complainants at a later stage.

32. The complainants by an application for amendment of complaint reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

33. The authority is of the view that the respondent was bound to deliver the possession 31.12.2014 but the respondent has not delivered the unit to the complainants till date.



Decision and directions of the authority

34. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondents are directed to deliver the possession to the complainants by 31.03.2019.
- (ii) The respondents are directed to pay the complainant interest for the period of delayed possession at the prescribed rate i.e 10.75% w.e.f 31.12.2014 till the offer of possession.
- (iii) The interest so accrued shall be paid by the respondents within a period of 90 days from the date of the order and subsequent interest shall be paid on the 10th of every month.

35. The complaint is disposed off accordingly.

36. The order is pronounced.



37. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.02.2019

Judgement uploaded on 28.03.2019



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