

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

Complaint no. : 1525 of 2018
Date of first hearing: 09.04.2019
Date of decision : 09.04.2019

Mrs. Mehak Mehta,
A-58 Vikaspuri,
New Delhi-110018

Complainant

Versus

M/s Sare Gurugram Pvt Ltd.
(formerly M/s Ramaprastha Sare Realty
Pvt Ltd)
Corporate Office: Plot no. 46, Udyog Vihar,
Phase-IV,
Gurugram-122015
Haryana
Also at Registered Office: E-7/12, LGF,
Malviya Nagar,
New Delhi-110017

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Bhupender Pratap Singh Advocate for the complainant
Shri Rahul Yadav Advocate for the respondent

ORDER

1. A complaint dated 13.11.2018 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. Mehak Mehta against the respondent M/s Sare Gurugram Pvt. Ltd. in respect of apartment/unit described below in the project 'Sports ParC', on account of violation of clause 3.2 of the flat buyer's agreement executed on 01.07.2016 for unit no. ~~102~~ ^{A-01-01-02} tower A01, first floor, for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer's agreement has been executed ~~on has been executed~~ on 01.07.2016 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, So, penal proceedings cannot 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
3. The particulars of the complaint are as under: -

Corrected vide order dated 31/05/19.



1.	Name and location of the project	"Sports ParC, Sector 92, Gurugram, Haryana
2.	Registered/not registered	Registered (175 of 2017 dated 30.08.2017)
3.	Revised date of completion of project as per RERA registration	30.09.2021
4.	Nature of real estate project	Residential group housing
5.	Payment plan	Construction linked plan
6.	DTCP license number	42 of 2010 dated 07.06.2010
7.	Date of execution of flat buyer's agreement	01.07.2016
8.	Date of allotment	03.11.2015
9.	Date of booking	09.04.2015
10.	Total area of project	17.212 acres
11.	Unit area	1295 sq. ft.
12.	Unit no. A-01-01-02	102 , tower no. A, first floor
13.	Total consideration of the unit	Rs.92,40,890 /- (as per annexure D of the agreement)
14.	Total amount paid by the complainant	Rs.28,78,815 /- (as per account statement dated 14.12.2017)
15.	Due date of delivery of possession	09.10.2018 Grace period of 6 months is given to

Corrected vide order dated 31/05/19.

	As per clause 3.2: within 36 months from date of booking plus additional period of 6 months)	the respondent for exigencies beyond the control of the respondent
16.	Delay of number of months/ years till date decision	6 months
17.	Penalty as per agreement	Rs 5/- per sq. ft. per month of the saleable area of the said flat

4. As per the details provided above, which have been checked as per record of the case file. A flat buyer's agreement dated 01.07.2016 is available on record for unit no. 102, tower-A, first floor according to which the possession of the aforesaid unit was to be delivered by 09.10.2018. The promoter has failed to deliver the possession of the said unit to the complainant by the due date as per flat buyer's agreement dated 01.07.2016. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 09.04.2019. The

case came up for hearing on 09.04.2019. The reply filed by the respondent has been perused by the authority.

FACTS OF THE CASE:

6. The complainant submitted that an email dated 11.02.2015 received from Mr. Sudip Mazumder, the manager of SARE advising about the project OLMPIA, sector-92, Gurugram to Mehak Mehta & her mother, Mrs Sushma Mehta.
7. The complainant submitted that an email dated 06.04.2015 was received from Mr. Sudip Mazumder, attaching the project brochure, location overview and some key developments of project. In the said mail it was mentioned that SARE HOMES is about to launch a new project spread across 17.5 acres of land.
8. The complainant further submitted that on 9.04.2015 the then,, manager, Mr. Mazumdar of M/s Ramaprastha Sare Realty Pvt Ltd, now called SARE GURUGRAM PVT LTD visited the house of Mrs. Mehak Mehta with an appointment of Mr. Jawahar Lal Mehta father of Mrs. Mehak Mehta for selling their units for a project which is about to launch, the then, "OLYMPIA" now called SPORTS PARC at their land parcel of

17.5 acres of land in sector 92, Gurugram and on the same day vide mail dated 09.04.2015 developer confirmed the booking for a unit A-01-~~02~~-02 for 3 BHK for 1295 sq. ft. super area in the name of Mrs. Mehak Mehta and an amount of Rs 9,00,000/- was paid through cheques as booking amount on the same day. Thus, the booking date is confirmed as 09.04.2015 for all purposes.

9. It is submitted by the complainant that developer confirmed the booking vide their letter dated 26.10.2015. Complainant further contended that the complainant received a letter dated 03.11.2015 from developer for allotment of a unit no A-01-01-02 of their project called OLYMPIA at sector 92, Gurugram PIN-122001.
10. The complainant submitted that during visit of Mrs. Mehak Mehta, NRI, to India for solemnising her marriage, flat buyer's agreement was executed between both the parties on 01.07.2016 under smart investment construction linked payment plan.

*Corrected vide
order dated 31/05/19.*

11. It is further submitted by the complainant that as per clause 3.2 of the flat buyer's agreement, the company shall endeavour to offer possession of the said flat within 36 months from the date of booking and subject to timely payment by the allottee towards the basic sale price and other charges the company as demanded in terms of this agreement. The company shall be entitled to six months additional period in the event there is a delay in handing over possession of the said flat.
12. The complainant alleged that as of today the construction of the project has not yet started for digging of land although all building plan approvals as per agreement clause were in hand of the developer on 26.09.2014.
13. The complainant further contended that an amount of Rs. 28,78,815 was deposited with developer during period from 15.04.2015 to 03.08.2017.
14. The complainant submitted that he sent scores of mails and various letters during the year 2017-18 to developer regarding transfer of interest to Mrs. Mehak Mehta as per agreement and to know status of project. We have never

received a reply in respect of status of project and transfer of interest to be paid by developer on quarterly basis.

Issues to be decided

- i. Whether the amount of Rs. 28,78,815.00/- shall be refunded immediately along with prescribed rate of interest to the complainant and whether the interest is to be paid from the date of deposit from time to time under smart investment construction linked payment plan?
- ii. Whether interest shall be transferred from 01.04.2018 onwards to bank account of complainant as per clause 2.8 /2.8.1 /2.8.1(a) /2.8.1(b) of the flat buyer's agreement. Since developer stopped paying interest from 01.04.2018?
- iii. Whether the respondent is bound to issue form 16 A (TDS certificate) to complainant regarding TDS on interest income for the assessment year 2018-19?

Reliefs sought:-

- i. The amount of Rs. 28,78,815/- be refunded immediately along with prescribed rate of interest to the complainant

and interest to be paid from the date of deposit from time to time under smart investment construction linked payment plan.

- ii. Transfer of interest from 01.04.2018 onwards to bank account of complainant in respect of quarterly interest payable on the deposit with developer. Also interest is to be paid by the developer in respect of delayed payment of interest amount on quarterly basis not paid on its due date for every quarter.
- iii. Issue of form 16 A (TDS certificate) to complainant regarding TDS on interest income for the assessment year 2018-19.

Reply by the respondent:

15. The respondent submitted that it is developing a larger residential group housing project over land measuring 33431.211 sq. mtrs in sector 92, village Dhorka, Gurugram. This entire project is being developed by the respondent. The said project has been separately registered under RERA vide registration no. **175 of 2017**.

16. The respondent submitted that subject tower/project i.e. A01 of the Sports ParC, village Dhorka, Sector-92, Gurugram, has been registered with Haryana Real Estate Regulatory Authority, Panchkula and registration certificate bearing memo no. HRERA-237/2017/834 dated 30.08.2017 with registration no. 175 of 2017 has been issued by the authority. As per the registration certificate, the respondent no.1 has been allowed to complete the project till 30.09.2021.
17. The respondent submitted that on the request of the complainant flat bearing no. ~~102~~, having super area 1295 sq. ft. in tower-A01, ~~The Petioles~~ in project Sports ParC, Sector-92, Gurugram, was allotted by the respondent to the complainant and the parties entered into legally binding agreement therefore, any relief beyond the terms and conditions of the agreement is unjustified.
18. The respondent alleged that the registration certificate is valid for a period till **30.09.2021** and as per section 5 (3) of the Act, the registration granted under this section shall be valid for a period given by the promoter under sub-section (c), of clause / of subsection (2) of section 4 of the act for completion of the

*Corrected vide order
dated 31/05/19.*

project or phase thereof, as the case may be. Therefore, the respondent has been allowed to complete the project by 30.09.2021. Therefore, the complaint is premature.

19. The respondent submitted that the RERA act or the rules nowhere declares the terms and conditions of the existing flat buyer's agreement for sale as null or void, therefore the terms of agreement should not be selectively enforced. If developer is expected to complete the project as per the timeline given under the agreement, then the delay compensation, or cancelation/surrender of the allotment by the allottee and refund should also be according to the agreement.

Determination of issues:

20. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:
21. With respect to the **first issue** raised by the complainant, as per clause 3.2 of the flat buyer's agreement dated 01.07.2016 for unit no. ~~102~~^{A-01-01-D2}, tower-A, in project "Sports ParC", Sector-92, Gurugram, possession was to be handed over to the

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complainant within a period of 36 months from the date of booking + 6 months grace period which comes out to be 09.10.2018. Grace period of 6 months is given to the respondent for exigencies beyond the control of the respondent. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.28,78,815/- to the respondent against a total sale consideration of Rs.92,40,890/-. Complainant has prayed for refund of the deposited amount and also submitted photographs of the project which shows that project is nowhere on the ground.

22. Keeping in view the dismal state of project, the authority is of the considered view that in the given facts and circumstances, complainant is entitled to get back his deposited amount alongwith prescribed rate of interest i.e.10.75% per annum.
23. With respect to the **second** and **third issues**, authority is of view that it does not have the jurisdiction to entertain the same. Therefore, the complainant is directed to approach the appropriate forum regarding the same.

Findings of the authority

24. **Jurisdiction of the authority-** The authority has complete subject matter 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.
25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.
26. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

27. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.
28. Project is registered with the authority and as per registration, the revised date of delivery of possession is 30.9.2021.
29. As per clause 3.2 of the flat buyer's agreement dated 1.7.2016 for unit no. ^{A-01-01-02}102, tower-A, in project "Sports ParC", Sector-92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of booking + 6 months grace period which comes out to be 09.10.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.28,78,815/- to the respondent against a total sale consideration of Rs.92,40,890/-. Complainant has prayed for refund of the deposited amount and also submitted photographs of the project which shows that project is nowhere on the ground.
30. Keeping in view the dismal state of project, the authority is of the considered view that in the given facts and circumstances, complainant is entitled to get back his deposited amount

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alongwith prescribed rate of interest i.e.10.75% per annum.
Not even a single brick has been put on the project site.
Photographs annexed as annexure - A, B, and C as per section
18(1) of the Act, which is reproduced as under:-

*18(1) if the promoter fails to complete or is unable to give
possession of an apartment, plot or building:-*

(a) *In accordance with the terms of the agreement for sale or,
as the case may be, duly completed by the date specified
therein; or*

(b)
*He shall be liable on demand to the allottees, in case the
allottee wishes to withdraw from the project, without
prejudice to any other remedy available, to return the
amount received by him in respect of that apartment, plot,
building, as the case may be, with interest at such rate as
may be prescribed in this behalf.....*

Decision and directions of the authority:-

31. 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 refund the deposited amount to the complainant along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order. As there is no construction activity on the project site till date and due date of possession has already lapsed.

32. The order is pronounced.

33. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2019

Corrected Judgement uploaded on 11.06.2019

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with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mrs. Mehak Mehta against the respondent M/s Sare Gurugram Pvt. Ltd. in respect of apartment/unit described below in the project 'Sports ParC', on account of violation of clause 3.2 of the flat buyer's agreement executed on 01.07.2016 for unit no.102 tower A01, first floor, for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid.*

2. Since the flat buyer's agreement has been executed on has been executed on 01.07.2016 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, So, penal proceedings cannot 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
3. The particulars of the complaint are as under: -

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Reliefs sought:-

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Reply by the respondent:

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project or phase thereof, as the case may be. Therefore, the respondent has been allowed to complete the project by 30.09.2021. Therefore, the complaint is premature.

19. The respondent submitted that the RERA act or the rules nowhere declares the terms and conditions of the existing flat buyer's agreement for sale as null or void, therefore the terms of agreement should not be selectively enforced. If developer is expected to complete the project as per the timeline given under the agreement, then the delay compensation, or cancelation/surrender of the allotment by the allottee and refund should also be according to the agreement.

Determination of issues:

20. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:
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22. Keeping in view the dismal state of project, the authority is of the considered view that in the given facts and circumstances, complainant is entitled to get back his deposited amount alongwith prescribed rate of interest i.e.10.75% per annum.
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25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.
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27. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.
28. Project is registered with the authority and as per registration, the revised date of delivery of possession is 30.9.2021.
29. As per clause 3.2 of the flat buyer's agreement dated 1.7.2016 for unit no.102, tower-A, in project "Sports ParC", Sector-92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of booking + 6 months grace period which comes out to be 09.10.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.28,78,815/- to the respondent against a total sale consideration of Rs.92,40,890/-. Complainant has prayed for refund of the deposited amount and also submitted photographs of the project which shows that project is nowhere on the ground.
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He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf.....*

Decision and directions of the authority:-

31. 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:

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(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2019

Judgement uploaded on 29.04.2019