

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

Complaint no. : 13 of 2019  
First date of hearing: 23.07.2019  
Date of decision : 23.07.2019

Mr. Ravinder Pal Singh  
R/o H. no. 71, Defence Colony,  
Hisar, Haryana.

**Complainant**

Versus

M/s Ramprashtha Promoters and Developers  
Pvt. Ltd.  
Office at: 114, Sector-44,  
Pataudi Road, Gurugram  
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 Shushil Yadav Advocate for the complainant  
Shri Dheeraj Kapoor Advocate for the respondent  
Shri Shobhit Maheshwari Authorized representative on  
behalf of respondent company

**ORDER**

1. A complaint dated 02.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Ravinder Pal Singh, against the promoter M/s Ramprashtha Promoters and Developers Pvt. Ltd. on account of violation of clause 15(a)

**AUTHENTICATED**  
GURBACHAN KAUR  
LEGAL OFFICER





of apartment buyer's agreement dated 28.09.2010 in respect of apartment/unit described below in the project 'The Edge Tower', for not handing over possession by the due date which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 28.09.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on 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 case are as under: -

1.	Name and location of the project	"The Edge Tower", Sector 37-D, Gurugram
2.	Apartment/unit no.	702, 7 <sup>th</sup> floor, tower-B
3.	Apartment measuring	2390 sq. ft.
4.	RERA registered/ not registered.	<b>Registered (NOTE:Applied for extension)</b>
5.	Old registration no.	<b>279 of 2017</b>
6.	Proposed revision upto	<b>31.12.2018 (NOTE: In extension the respondent is committing to complete project the project by 31.12.2019)</b>
7.	DTCP license no.	33 of 2008 dated 19.02.2008





8.	Nature of real estate project	Group housing complex
9.	Date of execution of apartment buyer's agreement	28.09.2010
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per sch. of payment [page 43 of complaint]	Rs. 74,28,021/-
12.	Amount paid by the complainant as per receipts annexed [page 44 of reply]	Rs. 63,73,948/-
13.	Due date of delivery of possession as per clause 15(a) of apartment buyer's agreement (respondent proposed to handover possession by 31.08.2012 + 120 days grace period for applying and obtaining occupation certificate)	31.12.2012
14.	Delay in handing over possession till date 23.07.2019	6 years 06 months 23 days
15.	Penalty clause as per clause 17(a) of the apartment buyer's agreement	Rs.5/- per sq. ft of the super area per month till date of grant of possession to the allottee.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 31.12.2012 including grace period. Neither the respondent has delivered the possession of the said unit till date to the purchaser nor has paid any compensation @ Rs.5/- per sq. ft. of the super area per month for the period of delay





as per clause 17(a) of apartment buyer's agreement dated 28.09.2010. Therefore, the promoter 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 23.07.2019. The reply filed on behalf of the respondent on 09.04.2019 has been perused.

#### **Facts of the complaint**

6. The complainant submitted that he booked a residential apartment in the project being developed by the respondent namely "The Edge Tower" at Sector-37-D, Gurugram in Gadoli Kalan Village, Gurugram measuring 2390 sq. ft. for total sale consideration Rs. 74,28,021/-.
7. The complainant submitted that he has made a payment of Rs.63,73,948/- vide different cheques on different dates.
8. The complainant submitted that as per the agreement the respondent allotted the above said unit to the complainant and had agreed to deliver the unit by 31.08.2012 as per the agreement dated 28.09.2010 with extended period of 4 months.
9. The complainant submitted that he regularly visited the site but was surprised to see that the construction work is not in





progress and no one was present at the site to address the queries of the complainant. The complainant submitted that despite receiving 85-90% of the payment the respondent has failed to deliver the possession of the allotted apartment to the complainant.

10. The complainant submitted that as per clause 17(a) of the agreement, the clause of compensation at a such of nominal rate of Rs.5/- per sq. ft. per month for period of delay is unjust and the respondent has violated the complainant by not providing the possession of the apartment.
11. The complainant submitted that on ground of parity and equity the respondent should also be subjected to same rate of interest on the amount paid by the complainant i.e. 18% per annum.
12. The complainant submitted that he requested the respondent to hand over the possession several times but he refused to do so.
13. **Issues to be decided:**

The following issues have been raised by the complainant

- i. Whether the respondent/ promoter has failed to complete the construction on time? If so, whether the



complainant is entitled for delayed prescribed interest for delay in handing over possession?

- ii. Whether the respondent/ promoter is justified in demanding the interest @18% per annum?

#### 14. Relief sought

The complainant is seeking the following reliefs:

- i. Direct the respondent to deliver the possession of the apartment along with prescribed interest per annum on compounded rate from the date of delay in handing over the possession;
- ii. Pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

#### Respondent's reply

15. At the outset it is submitted by the respondent that the present complaint is not maintainable, and this authority has no jurisdiction to entertain the present complaint.

16. It is submitted that the complaint pertaining to compensation and interest for a grievance under section 12,14,18 and 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under Rule



29 of the HRERA Rules, 2017 read with section 31 and 71 of the Act and not before this authority.

17. The respondent submitted that the complainant had after fully satisfying himself about the interest and entitlement of the respondent in the said project applied for booking in the project.
18. The respondent submitted that the estimate time of handing over the possession of the apartment is 31.08.2012 plus 120 days, which comes out to be 31.12.2012 subject to force majeure and subject to complainant not defaulting in payment.
19. The respondent submitted that the complainant has defaulted in paying the payment. The respondent submitted that it has made declaration in terms of section 4(2)(l)(c) that it would complete the project by 31.12.2018 and has also applied for a further extension of 1 year with revised date as 31.12.2019. Thus, no cause of action can be said to have arisen to the complainant.
20. The respondent submitted that in case if it fails to deliver the apartment within the committed period then it shall be liable to pay delay compensation @Rs.5/- per sq. ft. per month of the super area of the apartment as per clause 17 of the said agreement.

21. The respondent submitted that it has continued with the project despite several adversities and is in process of completing the project and has already obtained OC of 5 towers out of 15 towers and should be able to apply occupation certificate for the apartment in question by 31.12.2019.
22. The respondent submitted that it had started the construction of the above said project immediately after approval of building plans i.e.13.08.2009.
23. The respondent submitted that the reasons for the delay were due to services of Supreme Infrastructure India Ltd. also due to writ filed in Punjab and Haryana High Court in CWP No. 20032 of 2008 titled as Sunil Singh Vs. MOEF and others where Hon'ble Court directed the ground water shall not be used for construction and other reasons etc.
24. The respondent submitted that terms of agreement are binding between the parties.

#### **Determination of Issues**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:



25. With respect to the **all issues**, raised by the complainant the authority came across that as per clause 15(a) of apartment buyer's agreement dated 28.09.2010. The clause regarding the possession of the said unit is reproduced below:
- "15(a) Possession*  
*"possession to be handed over by 31.08.2012 + 120 days grace period for applying and obtaining occupation certificate."*
26. The grace period of 120 days has been allowed to the respondent for the delay caused due to exigencies beyond control of the respondent. Accordingly, the due date of possession was 31.12.2012 and the possession has been delayed by 6 years 06 months 23 days till date of decision.
27. As the possession of the apartment was to be delivered by 31.12.2012 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil its obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.
28. The respondent is liable to pay interest at prescribed rate of interest i.e. 10.60% per annum w.e.f 31.12.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 read with rule 15 of Rules ibid, till offer of possession.



**Findings by the authority**

29. **Jurisdiction of the authority-** The application filed by respondent for rejection of complaint on the ground of jurisdiction is rejected hereby as, 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 complainant at a later stage.
30. 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. 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.
31. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned under section 11(4)(a) of the said Act. The complainant 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.

32. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
33. As per clause 15 (a) of the apartment buyer's agreement dated 28.09.2010 for unit no. 702, 7<sup>th</sup> floor, tower-B, in project "The Edge Tower", Sector-37-D, Gurugram, possession was to be handed over to the complainant by 31.08.2012 + 120 days grace period which comes out to be 31.12.2012. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.63,73,948/- to the respondent against a total sale consideration of Rs.74,28,021/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 31.12.2012 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.
34. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the



promoter which is the same as is being granted to the complainant in case of delayed possession.

**Decision and directions of the authority**

35. 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) Respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 31.12.2012 till offer of possession.
- (ii) The arrears of interest accrued till date of decision shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- (iii) Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



(iv) Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

36. Complaint stands disposed of. 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

Dated: 23.07.2019



**HARERA**  
GURUGRAM