

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

**Complaint No. : 114 of 2019**  
**First date of hearing : 28.05.2019**  
**Date of Decision : 23.07.2019**

Mrs. Vinita Prasad and Mr. Nagesh Nath Prasad  
Both R/o- H No. B/405, Sandeep Sarovar, SVP  
Nagar, Mhada, Near Versova, MTNL,  
Andheri West, Mumbai

**Complainants**

Versus

M/s Ramprastha Sare Gurugram Pvt. Ltd.  
Regd. Office: E-7/12, LGF, Malviya Nagar  
New Delhi-110017

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Zeeshan Ali  
Shri Rahul Yadav

Advocate for the complainants  
Advocate for the respondent

**BRIEF**

1. A complaint dated 14.01.2019 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 complainants Mrs. Vinita Prasad and Mr. Nagesh Nath Prasad, against the promoter M/s

Sare Gurugram Pvt. Ltd., in respect of unit no. P021101, in the project 'The Petioles in- Crescent ParC-II' located at sector-92, Gurugram 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 31.10.2012 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 noncompliance 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: -

- **DTCP license no.: 44 of 2009 dated 14.08.2009, 68 of 2011 dated 21.07.2011**
- **RERA registration: Registered vide no. 270 of 2017 dated 09.10.2017**
- **RERA registration validity: 31.03.2019**

1.	Name and location of the project	The Petioles –Crescent Par C-II, Sector 92 Gurugram, Haryana.
2.	Project area	48.818 acres

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3.	Unit no.	P021101, 11 <sup>th</sup> Floor, tower P02
4.	Nature of real estate project	Residential flat
5.	Measuring super area of the allotted unit	2040 sq. ft.
6.	Date of execution of flat buyer's agreement	31.10.2012
7.	Allotment letter	31.08.2012
8.	Date of booking	20.07.2012
9.	Payment Plan	Construction linked payment plan
10.	Total consideration	Rs. 96,30,746/-
11.	Total amount paid by the complainants	Rs. 93,15,871/-
12.	Date of start of construction	10.12.2012
13.	Due date of delivery of possession Clause 3.3- 36 months from the date of commencement of construction + 6 months grace (date of start of construction 10.12.2012)	<b>10.06.2016</b>
14.	Delay in handing over possession till date of decision	3 year 1 month and 13 days
15.	Penalty clause	Clause 3.3 of the said agreement i.e. Rs.5.00/- per sq. ft. per month of the super area of the unit for the period of delay.

4. The details provided above have been checked as per record available in the case file which has been provided by the complainant. A flat buyer's agreement dated 31.10.2012 is

available on record for the aforesaid flat/unit no. P021101, 11<sup>th</sup> Floor, tower P02 admeasuring 2040 sq. ft., as per which the complainants has made total payment of Rs. 93,15,871/- to the respondent. Neither the respondent has delivered the possession of the said unit till date to the complainants nor they have paid any compensation @ Rs.5.00/- per sq. ft. per month of the super area till the date as per clause 3.3 of buyer's agreement dated 31.10.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 28.05.2019. The reply filed on behalf of the respondent has been perused.

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

6. The complainants submitted that on several phone calls and conversation with the sales and marketing from the respondents, they got convinced with the project and thus decided to invest their hard earned money into the said project despite been aware of that in future they might have to face

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the troubles. They gave a sum of Rs. 7,99,994/- vide cheque no. 509721, 509722, 509718, 509719, 509725, 509724, 509723 and 509720 dated 20.07.2012 drawn on SBI. The application was enrolled for apartment with sale area of 2040 sq. ft. at the basic selling rate of Rs. 3695 per sq. ft.

7. The complainants submitted that the respondent company allotted unit no. P02 "**The Petioles**", type 4 BHK, eleventh floor by issuing the flat buyer's agreement dated 31.10.2012 to them on receipt of the amount as mentioned herein above. It is pertinent to mention here that the as per the clause 3.3 of the flat buyer's agreement, the possession of the said unit should be delivered within a period of 36 months of commencement of construction.
8. Further, they handed over a cheque no. 978176, 978195, 002200, 009297 and 002208 dated 08.12.2012, 13.03.2013, 12.04.2013 and 15.06.2013 drawn on HDFC Bank for a total sum of Rs. 23,72,831/- and the same was acknowledged by the respondent. They availed a housing loan dated 31.08.2013

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from SBI of Rs. 55,00,000/- for the purpose of paying installments of the said unit of respondent.

9. The complainants submitted that they thereafter handed over a cheque no. 648722, 046978, 648805, 716917 and 619082 dated 04.09.2013, 06.09.2013, 24.09.2013, 26.11.2013 and 21.02.2014 drawn on SBI for a sum of Rs. 31,73,781. They also handed over the demand draft dated 23.07.2014 of Rs. 6,06,242. After taking the said money, the aforesaid amount was also confirmed by the respondent vide its receipt.
10. They thereafter handed over a cheque no. 061343 dated 27.10.2014 drawn on SBI for a sum of Rs. 3,78,650/- for purpose of paying installments of the said unit of respondent. Thereafter, they handed over demand draft dated 07.01.2016 drawn on SBI for a sum of Rs. 19,20,451/-. Again, they handed over the cheque no. 046991 and 046990 dated 16.06.2017 of a sum of Rs. 92,662/-.
11. The complainants submitted that they had made several calls and personal visit to the respondent's office during the entire period from December 2015 till 2018. The respondent always

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has been given a standard reply that the property is ready within a year's time which apparently is impossible. It is pertinent to mention here that the respondent is give giving the same response from 2015 till date. Moreover, there is no progress of construction since February, 2016. However, actually no work is going on at the site since last two years. They also sent an email dated 31.07.2018 and stated that there is no construction going on at the site and there is no possibility apparently to complete the construction in near future and they want the refund. But the respondent did not response the email sent by them.

12. The complainants submitted his plea before hon'ble chair/ authority is that they had taken the said apartment so that their son would be able to live with his family. This delay has resulted in a lot of mental agony for them and they and their son's family is being forced to stay with them at their flat despite acute paucity of space. Therefore, the complainants have prayed before this hon'ble chair/authority to direct the respondent to handover the possession to them as early as possible.

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**13. Issues to be decided**

1. Whether the respondent failed to timely deliver the possession of the flat to complainant, as per terms of the flat buyer's agreement?
2. Whether the Respondent is intentionally delaying the project?

**14. Reliefs sought**

1. That the complainants are tired of running from pillar to post to seek justice and now with the ray of hope for fair justice has approached this court. Hence, it is prayed to pass an order against the respondent to handover the possession to the complainant as early as possible because the complainants had taken the said apartment for the purpose of residence of his son's family.
2. That the alternative prayer of the present petition to pass an order against the respondent that if the respondent unable to handover the possession, then the invested money of the complainants of Rs. 91,99,973/- shall be

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refunded to the complainants without any further delays or instalments or part payments plans.

3. That if the complainants would have invested this amount of Rs. 91,99,973/- somewhere else, then the complainants could have got many benefits/increments/returns on the invested money. Thus, humbly request to this court to kindly pass an order against the respondent to provide the complainants with the interest on the invested amount of Rs. Rs. 91,99,973/- @ 24% interest per annum from the date of each payment till the date of the judgment of this authority.
4. That the complainants has felt humiliations, tensions, stress and mental agony due to the bad behaviour, criminal nature, breach of trust from the respondents thus it is also prayed to this court to pass an order against the respondent to compensate it by paying Rs. 2,50,000/- in favour of the complainants.
5. That this court shall also pass an order against the respondent to pay the legal expenditure, counsel fee, cost

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of this complaint, cost of photocopies etc. as the amount of Rs. 25,000/- in favour of the complainants.

6. That any further such orders/Reliefs which this court may deem fit and suitable as per the law and according to their judgments.

### Respondent's reply

15. The respondent submitted that the name of the respondent no.1 company has been changed to SARE Gurugram Pvt. Ltd. As such, the present reply is being filed on behalf of SARE Gurugram Pvt. Ltd. At the very outset it is submitted that the respondent is developing a larger residential group housing project over land measuring 78250.380 sq. mtrs in Sector 92, Village Wazipur and Mewka, Gurugram. This entire project is being developed by the respondent in various phases. The unit/flat of the complainant falls under phase IV which has been separately registered under RERA vide registration **no. 270 of 2017**. The progress report regarding status of internal plaster plumbing, fire fighting, floor tiles, toilet wall mild floor

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tiles, electrification, internal paint, external plaster, external paint, lift installation, civil work, sewerage etc.

16. The respondent submitted that subject tower/project i.e. P 02 of The Petioles at Green ParC II. Crescent ParC, Sector-92, Gurugram, has been registered with Haryana Real Estate Regulatory Authority, Panchkula and Registration Certificate bearing Memo No. HRERA-454/2017/294 dated 09.10.2017 with registration no. 270 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 **31.03.2019**.
17. The respondent is a law abiding real estate developer for whom customer satisfaction is paramount. The respondent is in the process of developing inter alia various residential and commercial projects to the satisfaction of its customers. The respondent is doing its level best to implement the projects undertaken by the respondent in time and to deliver good quality apartments/ units and to provide excellent services to its clients/customers.

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18. The respondent submitted that on the request of the complainants the flat bearing no. P021101, having super area 2040 square ft. in tower-P02 The Petioles in project Green ParC 2 at Crescent ParC, Sector-92, Gurugram, was allotted by the respondent to the complainants and the parties entered into legally binding F.B.A. The parties are bound to follow the terms and conditions of the FBA and in case of termination of allotment or in case of delay in possession necessary provisions for payment of compensation to allottee have been incorporated therein. Therefore, any relief beyond the terms and conditions of the FBA, is unjustified. The relevant terms of the FBA are as follows:

2.2 *It is specifically agreed that 10 % of the basic sale price, as aforesaid, shall always be treated as earnest money. The earnest money shall be liable to be forfeited in the event of withdrawal of allotment by the Allottee and/or cancellation of allotment on account of default/breach of the terms and conditions of the allotment/transfer contained herein, including nonpayment of basic sale price/other charges. In the eventuality of*

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*withdrawal/cancellation, the earnest money deposited will stand forfeited and the balance amount," paid if any, will be refunded to allottees, without interest and such refund shall be made only once the said Flat is re-allotted/sold to another allottee.*

19. The respondent submitted that the allottee has been made to understand and is aware that the project is self-financed and the completion and progress of construction is subject to timely receipt of installments and other charges as per the payment plan. The allottee understands that withdrawal or cancellation of allotment on account of default, at any time, shall affect the funding of the project and hamper/delay its progress, resulting into incurring losses and/or damages by the company. As such, in case, the Allottee desires for withdrawal of allotment or if the allotment is cancelled on account default/breach of the terms and conditions of allotment including non-payment of basic sale price/other charges, at any time after completion of 50 % of the construction of the said flat, the company, apart from forfeiting the earnest money, as aforesaid; shall be entitled to deduct an

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additional amount, as penalty, which Shall be 10% of the total amount paid by the allottee till that time. The balance amount if any, will be refunded to the allottee, without any interest and such refund shall be made only once the said Flat is re-allotted/sold to another allottee.

20. The allottee hereby authorizes the company to forfeit, out of the amount paid/payable by it, the earnest money and penalty, as aforementioned, in the event of withdrawal/cancellation, of the allotment on account of failure of the allottee to perform its obligations or fulfill the terms and conditions stipulated herein, In such situation, the company' shall refund the amount, if any, over and above earnest money plus penalty, if applicable, only when the said flat is re-allotted /transferred to another allottee.

21. The respondent submitted that the company shall endeavor to offer possession of the flat within a period of 36 months from the date of commencement of construction and subject to timely payment by the allottee towards the basic sale price and other charges, as demanded in terms of the FBA. The said

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clause further provides that the time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all installments and completion of formalities required and timely receipt of all approvals from the concerned authorities. The company shall be entitled to 6 months additional period in the event there is a delay in handling over possession.

22. The respondent submitted that the RERA Act or the Rule nowhere declares the terms and conditions of the existing flat buyer agreement for sale (executed prior to the effective date of the Act, or Rules) as null or void, therefore the terms of /FBA should not be selectively enforced. If developer is expected to complete the project as per the timeline given under the FBA, then the delay compensation, OR cancelation/surrender of the allotment by the allottee and refund should also be according to the FBA. The explanation given at the end of the prescribed agreement for sale in annexure A of the Rules, it has been clarified that the promoter shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure shall not affect the validity of such existing

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agreement executed with its customers. Therefore, both the parties are bound to follow the terms and conditions of the agreement /FBA entered between them.

23. It may be noted that timely payment of the installments by the allottees of the entire project was essential terms for completion of the aforesaid project, however, the said project could not be completed within the tentative time given under FBA as the various allottees defaulted in payments of their installments.

#### **Determination of issues**

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

24. With respect to the **issues** raised by the complainants, the authority came across that as per clause 3.3 of buyer's agreement, the possession of the said apartment was to be handed over within 36 months plus grace period of 6 months from the date of start of construction. The date of commencement of construction i.e. 10.12.2012. Therefore, the





due date of possession shall be computed from 10.12.2012. The clause regarding the possession of the said unit is reproduced below:

*"3.3 The company shall endeavour to offer possession of the said that within a period of (36) months from the date of commencement of construction.....The company shall be entitled to six (6)months additional period in the event there is delay in handing over possession."*

25. Accordingly, the due date of possession was 10.06.2016 and the possession has been delayed by 3 year 1 month and 13 days till the date of decision. The delay compensation payable by the respondent @ Rs.5.00/- per sq. ft. per month of the super area of the unit for the period of delay beyond 36 + 6 months as per clause 3.3 of buyer's agreement is held to be very nominal and unjust. The terms of the 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 others. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

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*"...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."*

The complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 10.06.2016 till offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

### **Findings of the authority**

26. 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.

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27. 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.
28. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
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.
30. The complainants reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
31. Project is registered with the authority but the registration has expired and the respondent has applied for renewal of the registration and the revised date for handing over the possession of the flat is 31.12.2020.

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32. As per clause 3.3 of the flat buyer agreement dated 31.10.2012 for unit no.P021101, 11<sup>th</sup> floor, tower-P02, in project "The Petioles- Crescent ParC-11, Sector 92, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of commencement of construction + 6 months grace period which comes out to be 10.06.2016. However, the respondent has not delivered the unit in time. Complainants had already paid Rs.93,15,871/- to the respondent against a total sale consideration of Rs.96,30,746/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 10.06.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

**Decision and directions of the authority**

33. 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

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the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 10.60% p.a. on the paid amount of the complainants from the due date of delivery of possession as calculated above i.e. 10.06.2016 till offer of possession.
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The promoter shall not charge anything from the complainant which is not part of the BBA.
- 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.
- v. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order

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and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

34. The order is pronounced.
35. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2019

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