

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

Complaint no. : 2236 of 2019
Date of first hearing : 10.09.2019
Date of decision : 10.09.2019

1. Sh. Alok Tandon
2. Smt. Yachna Sehgal Tandon
R/o. E- 118, G.K. Part -2, 1st floor,
New Delhi.

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sh. Sushil Advocate for the complainant
Sh. Dheeraj Kapoor Advocate for the respondent
Sh. Rashmeet Virk Authorized representative for the respondent

ORDER

1. A complaint dated 20.05.2019 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, Sh. Alok Tandon and Smt. Yachna Sehgal Tandon, against the promoter





M/s Ramprastha Promoters and Developers Pvt. Ltd. in respect of apartment buyer agreement dated 17.10.2012 for apartment/ unit no. 1801, 18th floor in tower D in the project "Rise" located at Sector 37 D, Gurugram for not delivering the possession on due date which is in violation of obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer agreement dated 17.10.2012 was executed 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 this 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: -

1.	Name and location of the project	Rise, Sector 37 D, Gurugram.
2.	Nature of real estate project	Group housing complex
3.	Allotted apartment/unit no.	1801, 18 th floor, tower D
4.	Admeasuring area of the allotted apartment no.	1825 sq. ft.
5.	Project area	60.5112 acres
6.	RERA Registered/ not registered	Registered vide no. 278 of 2017

7.	RERA registration valid upto	30.06.2019 (already expired)
8.	Date of allotment letter	18.05.2012
9.	DTCP license no.	33 of 2008 dated 19.02.2008 (as per agreement at Pg. 20 of the complaint)
10.	Date of apartment buyer agreement	17.10.2012 (as per agreement at Pg. 16 of the complaint)
11.	Total consideration as per applicant's ledger	Rs. 82,11,375/- (Annx R-3)
12.	Total amount paid by the complainant till date	Rs. 69,98,022/- (Annx R-3, Pg. 48 of the reply)
13.	Payment plan	Construction linked plan (Pg.47 of the reply)
14.	Due date of delivery of possession as per apartment buyer agreement	31.01.2016 (clause 15 (a):- September,2015 plus 120 days grace period)
15.	Delay of number of months/ years till 10.09.2019	3 years, 7 months and 10 days.
16.	Compensation payable for delay as per the terms of agreement dated 17.10.2012	Clause 17(a): - Rs. 5/- per sq. ft. per month of the super area.

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 respondent. An apartment buyer agreement dated 17.10.2012 for the abovementioned apartment/unit is available on record according to which

possession of the said unit was to be delivered by 31.01.2016. However, the respondent has failed to deliver the possession till date which is in violation of obligation of the promoter under section 11(4)(a) of the Act *ibid*. Therefore, the promoter has failed to fulfil his committed as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 10.09.2019. The case came up for hearing on 10.09.2019. The reply filed by the respondent on 20.06.2019 which has been perused by the authority.

Facts of the complaint: -

6. Briefly put facts relevant for the disposal of the present complaint are that relying on the promise and undertakings given by the respondent, the complainants booked an apartment/flat admeasuring 1825 sq.ft. in project of the respondent for total sale consideration of Rs 84,32,922/- which includes BSP, car parking, IFMS, club membership, PLC etc.

7. It is submitted that the complainants have made a total payment of Rs. 69,98,022/- to the respondent vide different cheques on different dates.
8. As per flat buyer's agreement the respondent had allotted a unit/flat bearing no 1801 on 18th Floor in Tower-D having super area of 1825 sq. ft. to the complainant. That as per para no.15(a) of the builder buyer agreement, the respondent had agreed to deliver the possession of the flat latest by September 2015 as per the date of signing of the flat buyer's agreement dated 17.10.2012 with an extended/grace period of 120 days.
9. The complainants submitted that they regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address their queries. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the tower without completing the work. The respondent with malafide and dishonest motives and intention cheated and defrauded the complainants. Despite receiving of approximately 85-90% payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed

to deliver the possession of the allotted flat to the complainants within stipulated period.

10. It is submitted that as per clause 17 (a) of the flat buyer agreement dated 17.10.2012, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq.ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at a such of nominal rate of Rs.5/- per sq.ft per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.5/- per sq.ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @1% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

11. The complainants submitted that on the ground of parity and equity, the respondent also be subjected to pay the same rate

of interest hence the respondent is liable to pay interest on the amount paid by the complainant @18%per annum to be compounded from the promise date of possession till the flat is delivered to the complainant.

Issues to be determined: -

The relevant issues as per the complainants are -

- i) Whether the respondent has failed to complete the construction and deliver the possession of the apartment in question till date as per the terms of agreement dated 17.10.2012?
- ii) Whether the terms and conditions of the apartment buyer agreement dated 17.10.2012 is one sided and unjustified?
- iii) Whether the interest cost being demanded by the respondent/developer is very high i.e. 18% as the same is unjustified and not reasonable?

Relief sought:-

- Direct the respondent to handover the possession of the subject apartment alongwith prescribed interest per annum from the date of booking

Respondent's reply: -

12. The respondent submitted that the complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint under rule-28 of the said Rules and is seeking the relief of possession and interest u/s 18 of the said Act. Therefore, even though the project of the respondent is covered under the definition of "ongoing projects" and registered with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule-29 of the said Rules and not before this authority under rule-28 as such complaint is liable to be rejected.
13. It is also submitted that the complaint is not supported by any attested affidavit with a proper verification. In the absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.
14. It is submitted that the statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. The complainants are investors and not consumers and nowhere in the present complaint, have the complainant pleaded as to how the



complainant are consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant has entered into an agreement with the respondent to purchase the apartment in question.

15. The respondent contended that the complainants have not come with clean hands and have concealed the material fact that they are defaulter, having deliberately failed to make the payment of instalments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the statement of account.
16. The respondent submitted that despite several adversities, the respondent has continued with the construction of the project and is in the process of completing the construction of the project and should be able to apply the occupation certificate for the apartment in question by 30.06.2019 (as mentioned at the time of registration of the project with RERA) or within such extended time, as may be extended by the authority, as the case may be. However, as the complainants were only speculative investors and not interested in taking over the possession of the said apartment and because of slump in the real estate market, the complainant failed to make the

payments in time. It is apparent that the complainants are mere short term and speculative investors who had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession, the complainant could not make the payments in time and have now developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted and frivolous litigation. The alleged grievance of the complainant has origin and motive in sluggish real estate market.

17. It is submitted that the respondent is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainant/allotment offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said Rules, has been executed between the complainants and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 17.10.2012 executed much prior to coming into force of said Act or said Rules. The adjudication of the



complaint for refund, possession, interest and compensation, as provided under sections 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said Rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of the said Act and the said Rules. Thus, in view of the submissions made above, no relief can be granted to the complainant.

18. It was further contended by the respondent that no cause of action has ever accrued in favour of the complainant to file the present complaint before this authority.
19. The respondent has made huge investments in obtaining approvals and carrying on the construction and development of 'Rise' project and despite several adversities is in the process of completing the construction of the project and should be able to apply the occupation certificate for the said apartment in question by 30.06.2019 (as mentioned at the time of registration of the project with RERA) or within such extended time, as may be extended by the authority, as the case may be. The respondent continued with the development and construction of the said apartment and had to incur interest liability towards its bankers. The complainants



prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainant.

20. The respondent submitted that the fact that:- (a) till date, the complainants kept on making payment as per the payment plan, though not within the time prescribed, which resulted in delay payment charges/interest; and (b) that from the date of booking till the filing of the present complaint, the complainants never raised any issue whatsoever, clearly reveals that the complainants had no issue or concern about the said apartment/agreement and terms and conditions of the said apartment buyer's agreement and is now unnecessarily raising false and frivolous issues and has filed the present complaint.

21. The respondent submitted that it has developed various projects and has completed those projects. The respondent has obtained occupancy certificate in majority of its projects. The below table shows the project name, its size and the current status of the project. The respondent has been diligent

in completing all its project and shall be completing the remaining projects in phased manner.

Determination of issues: -

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

22. With respect to the **first issue** raised by the complainants, it is evident from the perusal of records that as per clause 15 (a) of the apartment buyer's agreement dated 17.10.2012, possession of the allotted apartment/unit was to be delivered by September, 2015 with a further grace period of 120 days which on calculation comes out to be 31.01.2016. However, the respondent has failed to deliver the possession till date which is in violation of section 11(4)(a) of the Act.
23. Since, there is a delay of 3 years, 7 months and 10 days, hence, the complainant is entitled for delayed possession charges at the prescribed rate of interest of 10.35% per annum for every month of delay in terms of section 18(1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

24. With respect to **second and third issue** raised by the complainants, the authority is of the considered view The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super of the said apartment as per clause 17 (a) of apartment buyer's agreement is held to be very nominal and unjust in comparison to interest rate of 18% p.a. as demanded by the respondent. 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 Ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

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

Decision and directions of the Authority:-

25. Keeping in view the facts and circumstances of the case, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following direction to the parties: -

- The respondent is directed to pay delayed possession charges in terms of section 18(1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, at the prescribed rate of interest of 10.35% per annum with effect from 31.01.2016 till actual offer of possession.
- The interest so accrued from due date of delivery of possession i.e. 31.01.2016 till date of order (10.09.2019) be paid within 90 days and thereafter monthly interest at the prescribed rate of 10.35% per annum be paid on or before 10th of each subsequent English calendar month.
- Complainant is also directed to pay outstanding dues, if any, after adjustment of interest for the delayed period of possession. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.35% per annum by the promoter, which is the same as is being granted to the complainants in case of delayed possession charges.

- The respondent-promoter shall not charge any amount/charges from the complainants which is not a part of the buyer's agreement.

26. The order is pronounced.

27. Case file be consigned to the registry.



Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.09.2019

Judgement uploaded on 14.10.2019

AUTHENTICATED

GUJBACHAN KAUR
LEGAL OFFICER

HARERA
GURUGRAM