

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

Complaint No. : 400 of 2018
First date of Hearing : 02.08.2018
Date of Decision : 16.10.2018

Nishtha Gupta
R/o House no. 409, Manhatan 5, Mahagun
Moderne, Sector 78, Noida-201301 **...Complainant**

Versus

M/s Ramprastha Sare Realty Pvt Ltd
Office : Plot no. 46, Udyog Vihar,
Phase-4, Gurugram, Haryana-122015 **...Respondent**

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

**Chairman
Member
Member**

APPEARANCE:

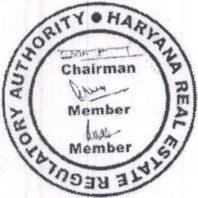
Complainant in person

Advocate for the complainant

Shri Akash Aggarwal

Advocate for the respondent

**HAREERA
GURUGRAM
ORDER**



1. A complaint dated 07.06.2018 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 Nishtha Gupta, against the promoter M/s Ramprastha Sare Realty Pvt Ltd on

account of violation of the clause 3.3 of flat-buyer agreement dated 29.08.2014 executed for flat no. G2-0401, 4th floor in the project "The Grand", Sector-92, Gurugram for not giving possession on the due date i.e 29.06.2017 which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Grand" at Sector 92, Gurugram
2.	Nature of real estate project	Residential project
3.	Unit no.	G2-0401
4.	Project area	39,211.42 sq. m
5.	DTCP license	44 of 2009 68 of 2011
6.	Registered/ not registered	Registered
7.	RERA registration no	262 of 2017
8.	Completion date as per RERA registration certificate	30.09.2019
9.	Date of booking	21.03.2013
10.	Date of flat buyer agreement	29.08.2014
11.	Total consideration	Rs. 1,17,00,205/-
12.	Total amount paid by the complainant	Rs 88,36,015/-
13.	Payment plan	Milestone linked plan
14.	Date of delivery of possession.	Clause 3.3 - 40 months from the date of commencement of construction i.e 26.09.2013 + 6 months



		grace period i.e. 29.06.2017
15.	Delay of number of months/ years upto 16.10.2018	1 year 3 months 16 days
16.	Penalty clause as per flat buyer agreement dated 29.08.2014	Clause 3.3 - Rs 5 per sq. ft per month of the saleable area for the period of delay

3. The details provided above have been checked as per the case file available on record provided by complainant and respondent. As per flat buyer agreement executed between the parties, the possession of the aforesaid unit was to be delivered by 29.06.2017. The promoter has failed to deliver the possession of the said unit to the complainant by the due date 29.06.2017. Therefore, the promoter has not fulfilled his committed liability till date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 02.08.2018. The case came up for hearing on 02.08.2018, 05.09.2018, 19.09.2018. The reply has been filed on behalf of the respondent on 04.09.2018



FACTS OF THE COMPLAINT

5. The complainant submitted that the respondent published an advertisement on their website regarding development of 3 and 4 BHK Apartments in the name and style of "The Grand" a residential project located at Sector 92, Gurugram. The respondent assured On Time Possession of the project in the advertisement.
6. The complainant submitted that the complainant booked a 3 BHK flat in the aforesaid project vide application dated 21.03.2013.
7. As per clause 3.3 of the flat buyer agreement, the respondent had agreed to deliver the possession of the flat within 40 months from the date of commencement of construction i.e 26.09.2013 with an extended period of 6 months and respondent failed to deliver the possession of booked unit till date.
8. The complainant submitted that the complainant regularly visited the project site but was surprised to see that the progress of construction was significantly behind the schedule. Moreover on the date of last visit of the project site by the complainant, it was observed that there was no manpower on the site.



9. The complainant also submitted that the complainant is also bearing an additional burden of a rental accommodation of Rs 38,000/- rent along with maintenance of Rs 8000/- per month.
10. The complainant also confirmed that the complainant had availed home loan from Axis Bank and the respondent granted permission to mortgage the booked property in favour of Axis Bank vide Letter dated 26.08.2015 addressed to the Axis Bank.

ISSUES RAISED BY THE COMPLAINANT

11. The issues raised by the complainant are as follows :-
- Whether the respondent has delivered the possession of the booked unit to the complainant on assured date?
 - Whether the respondent should be directed to cancel the agreement and refund the total amount paid by the complainant along with interest and compensation?
 - Whether the respondent has made incorrect or false statements in its e-brochure with regard to "On Time Delivery" of its project?



Relief sought

12. The reliefs sought by the complainant are as follows :-

- i. To direct the respondent to refund the total amount of Rs.88,36,015/- paid by the complainant to the respondent party as instalments towards purchase of flat.
- ii. To direct respondent to pay delay interest amount of Rs 28,78,606/- calculated at the rate of prescribed interest. The SBI highest marginal cost of lending rate plus two percent has been considered as prescribed interest.
- iii. To direct the respondent to pay a compensation amount of Rs. 1,11,180/- (Ten Lakhs) for deficiency in service.
- iv. To direct the respondent to issue demand draft of Rs 67,34,695/- towards outstanding home loan in favour of Axis Bank.
- v. To direct the respondent to issue demand draft of the remaining amount in favour of complainant.

RESPONDENT'S REPLY

13. The respondent submitted that the complainant and respondent entered into legally binding flat buyer agreement



dated 29.08.2014, therefore both the parties are bound to follow the terms and conditions of the FBA and clause 3.3 of FBA prescribes a penalty amount for delay in delivery of possession of the project. Therefore any relief beyond the terms and conditions of FBA is unjustified.

14. The respondent submitted that the registration certificate granted to the respondent is valid till the date of 30.09.2019 and according to sec 5 (3) of the Act, the registration granted under this section shall be valid for a period given by the promoter under section © of clause 1 of subsection (2) of section 4 of the Act for completion of the project or phase thereof , as the case may be. Therefore the respondent has been allowed to complete the project by 30.09.2019. Therefore, the complaint is premature.
15. The respondent also submitted that the complainant has been a habitual defaulter in payments of instalments.
16. The respondent vehemently denied the contention of the complainant that there was no manpower on the site during the visit of the complainant and that lot of work is still remained to be completed.
17. The respondent submitted that the respondent is not liable for any personal obligations of the complainant.



18. The respondent also submitted that no incorrect or false advertisement has been published by the respondent.

Determination of issues

19. 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 is as under :

- i. **First issue** : As per clause 3.3 of the flat buyer agreement, the respondent had to deliver the possession of the booked unit to the complainant within a period of 40 months from the date of commencement of construction along with a grace period of 6 months i.e. 29.06.2017 and the respondent has failed to do so. Therefore, the respondent company has caused unjustifiable delay.
- ii. **Second Issue** : In view of the present status of the project, the respondent cannot be directed to refund the total consideration paid by the complainant as the authority is of the consistent view that in cases where the development status of the project is above 50%, the authority will not allow refund in the interest of the development of the project and other allottees. According to details submitted by the respondent



regarding the entire group housing project (Annexure R/3), the development status of the phase 5th of the project is 64.3%.

Since, the promoter has committed a default in handing over the possession as per the BBA dated 29.08.2014 and thus respondent is liable to pay delayed interest under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.45%, for every month of delay till the handing over of possession.

- iii. **Third Issue** : After perusal of the brochure of project in question, the authority is of the view, that the respondent has not made any statements in its e-brochure with respect to "On Time Delivery" of its project.

Findings of the Authority

Jurisdiction of the authority-

20. The preliminary objections raised by the respondent 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 complainant at a later stage.

21. In the present case, the project is registered and the due date of completion of project is 30.9.2019 and according to the statement of the builder, 64.3% of the project is complete. The respondent intend to abide by their commitment to complete the project by revised due date. Therefore, It is not advisable to order refund at the present juncture. However, as per the provisions of Section 18 (1) of the Real Estate (Regulation and Development) Act 2016, the buyer is entitled to get prescribed rate of interest i.e. 10.45% per annum w.e.f. 29.6.2017 till handing over the possession of the flat to the complainant. If the builder fails to hand over the unit to the complainant on the revised committed date i.e. 30.9.2019, in that case, the buyer can seek refund.


Decision and directions of the authority


22. 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 pay the buyer delay interest at the prescribed rate of interest i.e. 10.45% per annum w.e.f. 29.06.2017 till handing over the possession of the flat to the complainant.
- ii. The arrears of interest accrued so far shall be paid within 90 days from the issuance of this order and thereafter monthly payment of interest shall be paid before 10th of subsequent month till handing over the possession.
- iii. If the builder fails to hand over the unit to the complainant on the revised committed date i.e. 30.9.2019, in that case, the buyer can seek refund
- iv. The complaint is disposed of accordingly.
- v. Detailed order will follow.
- vi. File be consigned to the registry.




(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated : 16.10.2018