



BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 191 of 2019 First date of hearing: 23.07.2019 Date of decision : 11.12.2019

1. Chetan Malvi

2. Geetaben B Malvi

Address: B-65A, 2nd floor, Kalkaji, New Delhi - Complainants

110019

Versus

M/s Ramprastha Promoters and Developers

Pvt. Ltd.

Address: 114, Sector-44 Respondent

Gurugram-122002

Haryana

CORAM

Shri Samir Kumar Member Shri Subhash Chander Kush Member

APPEARANCE:

Shri Nilotpal Shyam with Ms. Advocates for the Shivali complainants

Shri Dheeraj Kapoor Advocate for the respondent AR of respondent company

ORDER

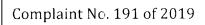
1. The present complaint dated 11.02.2019 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the



Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

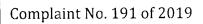
2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No	Heads	
1.	Project Name and location of	"The Edge Tower",
	the project	Sector 37D, Gurugram
2.	Project Area	60.5112 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity	33 of 2008 dated
	status	19.02.2008 valid up to
a service and a		18.02.2020
5.	Name of licensee	M/s Ramprastha
		Builders Private Limited
		and eleven others as
		mentioned in licence no.
		33 of 2008 issued by
		DTCP Haryana (copy as
		annexure A6 at page no.
		102-106 of reply)
6.	RERA Registered/not registered	Registered vide no. 279
		of 2017 dated





		09.10.2017(Tower A to
		G, N and O)
7.	RERA registration valid Upto	31.12.2018
		Note: already expired but
		the respondent has
		applied for extension of
		one year
		(Page no. 18 of reply)
8.	Unit no.	F1303, 13 th floor, tower
		no. F
		(Page no. 32 of
		complaint)
9.	Unit measuring	1310 sq. ft.
		(Page no. 32 of
		complaint)
10.	Date of execution of apartment	22.10.2010
	buyer's agreement	(Page no 28 of
		complaint)
11.	Allotment Letter	22.10.2010
		(Page no. 26 of
		complaint)
12.	Payment plan	Construction linked plan
		(Page no. 57 of
		complaint)





13.	Total sale consideration	₹42,54,805/- as per
		Annexure R-2 Applicant
		ledger dated 05.04.2019
		(Page no 49 of Reply)
14.	Amount paid by the allottee	₹36,58,450/- as per
		payment schedule
		(Page no. 50 of reply)
15.	Due date of delivery of	31.12.2012
	possession as per clause 15(a)	
	of apartment buyer's	
	agreement:	
	By 31.08.2012+120 days of	
E.	grace period for applying and	
	obtaining the occupation	
<u> </u> 	certificate in respect of the	
	Group Housing Complex	
16.	Delay in handling over	Possession not offered
	possession till date	so far
17.	Status of project	Ongoing
18.	Specific relief sought (in specific	To direct the
	terms)	respondent to pay
		delayed possession
		interest at prescribed
		rate of interest per
		annum for delayed



	period in handing over
	the possession.

3. As per clause 15(a) of the Apartment buyer's agreement the possession was to be handed over by 31.08.2012 plus grace period of 120 days for applying and obtaining the occupation certificate in respect of the Group Housing Complex. which comes out to be 31.12.2012. Clause 15(a) of the apartment buyer's agreement is reproduced below:

"15. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions; formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31/08/2012 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

4. The respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the apartment buyer's agreement and failed to offer of possession in terms of section 18 of the Act read with the rules. Hence, this complaint for the relief detailed above.



- 5. On the date of hearing the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
- 6. According to the respondent the delay in construction was for the reasons stated in the reply which were beyond its control.
- 7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents.
- 8. The Authority based on information and explanation and other submissions made and the documents filed by both the parties is of considered view that there is no need of further hearing in the complaint.

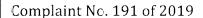
Arguments are heard:

- 9. The Act is to protect the rights of the stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
- 10. On consideration of the circumstances, the evidence and other record and submissions made by both the complainant and respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention



of the provisions of the Act. By virtue of clause 15(a) of apartment buyer's agreement executed between the parties on 22.10.2010, possession of the booked unit was to be delivered by 31.08.2012 plus grace period of 120 days for applying and obtaining the occupation certificate in respect of the Group Housing Complex. Therefore, the due date of handing over possession comes out to be 31.12.2012. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 22.10.2010 also transfer documents concerning the apartment in favor of the complainant to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 31.12.2012 till actual handing over the possession of the booked unit as per the proviso to section 18(1) of the Act read with rules 15 of the Rules.

- 11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
 - i. The respondent is directed to pay interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 31.12.2012 till the actual handing over the possession of the booked unit.





- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent is directed to pay interest accrued from 31.12.2012 till the date of this order to the complainant within 90 days from the date of this order and subsequent interest to be paid by the 10th of each succeeding month
- iv. Complaint stands disposed of.
- v. File be consigned to registry.

Samir Kumar (Member)

Subhash Chander Kush (Member)

Haryana Real Estate Regulatory Authority, Gurugram Dated: 11.12.2019

Judgement uploaded on 28.01.2020