

**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
Gurugram-122002
Haryana

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

| | |
|--------------------------------------|--------------------------------|
| Shri Nilotpal Shyam with Ms. Shivali | Advocates for the complainants |
| Shri Dheeraj Kapoor | Advocate for the respondent |
| Ms. Rashmeet Virk | 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 project | "The Edge Tower", Sector 37D, Gurugram |
| 2. | Project Area | 60.5112 acres |
| 3. | Nature of the project | Group housing complex |
| 4. | DTCP license no. and validity status | 33 of 2008 dated 19.02.2008 valid up to 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 buyer's agreement | 22.10.2010 (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) |

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| 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 possession as per clause 15(a) of apartment buyer's agreement: By 31.08.2012+120 days of grace period for applying and obtaining the occupation certificate in respect of the Group Housing Complex | 31.12.2012 |
| 16. | Delay in handing over possession till date | Possession not offered so far |
| 17. | Status of project | Ongoing |
| 18. | Specific relief sought (in specific terms) | To direct the 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