


PROCEEDINGS OF THE DAY


Day and Date	Thursday and 12.7.2018
Complaint No.	143/2018 case titled as Mr. Shreevar Goel versus M/s Ramprastha Sare Realty Pvt. Ltd.
Complainant	Mr. Shreevar Goel
Represented through	Complainant in person.
Respondent	M/s Ramprastha Sare Realty Pvt. Ltd
Respondent Represented through	Shri Manoj Kumar Advocate for the respondent.


Proceedings

The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

Affidavit regarding the status of the project has been filed by the respondent today. Arguments advanced by both the parties have been heard. The complainant has stated that he intends to continue with the project subject to the condition that possession shall be handed over by the respondent as per the date declared by them in their registration application and the complainant shall be given interest for every month of delay till the handing over possession at the prescribed rate. The respondent if wants to give calculation sheet, if any, shall file in the Registry. The respondent is directed to allow the complainant to visit the project without any interference. The complaint is disposed of accordingly. Detail order will follow. File be consigned to the Registry.


Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
12.7.2018


Subhash Chander Kush
(Member)

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

Complaint No. : 143 of 2018
Date of Institution : 09.04.2018
Date of Decision : 12.07.2018

Mr. Shreevar Goel
R/o. H.No. 1832,
Sector-17A, Gurgaon

Complainant

Versus

Ramprastha SARE Reality Pvt. Ltd.
(Now SARE Gurugram Pvt. Ltd.)
Regd. Office: E-7/12, LGF, Malviya Nagar,
New Delhi 110017

Respondent

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

Mr. Shreevar Goel
Shri Manoj Kumar

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 09.04.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Shreevar Goel, against the promoter, Ramprastha Sare Reality Pvt. Ltd.



(Now SARE Gurugram Pvt. Ltd.), on account of violation of clause 3.3 of the Builder Buyer Agreement executed on 06.06.2013 in respect of apartment described as below for not handing over possession on the due date i.e. 29.10.2015 which is an obligation 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	"Green ParC-II" forming part of Crescent ParC, Sector 92, Gurugram.
2.	Flat/Apartment/Unit No.	P051002, 10 th floor, Tower- "Petioles Tower", Block: P05.
3.	HRERA Registration No.	270 of 2017 dated 09.10.2017
4.	Date of completion as per RERA Registration Certificate.	31.03.2019
5.	Total consideration amount as per agreement dated 06.06.2013	Rs.87,56,420/-
6.	Total amount paid by the complainant till date	Rs.88,50,783/-
7.	Date of delivery of possession as per Builder Buyer Agreement (36 Months + 6 months grace period from the date of commencement of construction i.e 29.10.2012	29.10.2015
8.	Delay of number of years / months/ days till date	2 Years, 8 months and 14 days
9.	Penalty Clause as per builder buyer agreement dated 06.06.2013.	Sub clause 3 of Clause 3 of the Agreement i.e. Rs.5/- per sq. ft per month of the Saleable Area of the said flat.



10.	Cause of delay in delivery of possession	No valid reason explained by the promoter for the delay.
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3. As per the details provided above, which have been checked as per record available in the case file. A builder buyer agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered to the complainant by 29.10.2015. The respondent company has not delivered the possession till 12.07.2018. Neither they have delivered the possession of the said unit as on date to the purchaser nor have paid any compensation @ Rs.5/- per sq. ft per month of the Super Area of the said flat for the period of such delay as per Clause 3.3 of builder buyer agreement dated 06.06.2013.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 15.05.2018. The case came up for hearing on 15.05.2018, 19.06.2018, 05.07.2018 & 12.07.2018. The reply has been filed on behalf of the respondent on 31.05.2018 which has been perused. On 19.06.2018, the respondent was asked to file an affidavit regarding the status of the project and the same was filed on 02.07.2018. The complainant filed the rejoinder to rebut the reply filed by the



respondent in which the complainant reaffirmed the contentions given in the complaint.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The complainant submitted that the respondent miserably failed to hand over the possession of the said unit within the stipulated time.

The respondent contended that the parties are bound by the terms and conditions of the Builder Buyer Agreement and in case of delay in handing over possession, necessary provisions for payment of compensation to allottee have been incorporated therein and any relief beyond the terms and conditions of BBA are unjustified. Further, the learned counsel for the respondent has stated that construction of the project will be completed till 31.03.2019 as stated in HRERA Registration Certificate and by that time they will be able to give possession to the complainant. The respondent has requested that the names of the Respondent No. 2 to 6 (names of the directors) be deleted from the array of parties.

The respondent also filed an affidavit dated 02.07.2018 affirming that the said unit falls under phase IV of the project



and that the said phase is 91.51% complete and will handover possession on or before 31.03.2019.

6. As per clause 3.3 of the Builder Buyer Agreement, the possession of the flat was to be handed over within 36 Months from the date of commencement of construction (with a grace period of 6 months). The clause regarding the possession of the said unit is reproduced below:

"3.3 Possession

The company shall endeavour to offer possession of the said flat within a period of thirty-six (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 this agreement. The time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all instalments and completion of formalities required and the timely receipts of all approvals from the concerned authorities. The company shall be entitled to six (6) months additional period in the event there is a delay in handing over possession. However, in case of delay beyond period of six (6) months and such delay is attributable to the Company, the Company shall be liable to pay compensation @ Rs.5/- (Rs. Five) per sq. ft. per month of the Super Area of the Said Flat for the period of further delay."

7. The complainant in his pleadings stated that the date of commencement of construction was 29.10.2012 and therefore the due date of handing over the possession comes out to be 29.10.2015. These averments of the complainant were not specifically denied by the respondent. Accordingly, the due



date of possession was 29.10.2015. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area of the said flat as per Clause 3.3 of the Builder Buyer 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 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."

8. As the possession of the flat was to be delivered by 29.10.2015 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the



allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

9. The complainant makes a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

"34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

"37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."



10. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act; Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

11. In the present complaint, the complainant is seeking refund of the amount paid along with prescribed rate of interest and intends to withdraw from the project. As per section 18(1) of the Act, complainant has made a demand to the promoter to



return the amount received by him in respect of the flat allotted to him with prescribed rate of interest.

12. However, keeping in view the present status of the project and considering the advanced stage of construction in this project, the Authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project as the project is approximately 91% complete and will be completed within next one and a half years. The refund of deposited amount will also have adverse effect on the other allottees. Therefore, the relief sought by the complainant cannot be allowed. Also, the complainant wished to continue with the project if the new date declared by the Respondent is adhered to for giving the possession. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.

13. As far as contention of the respondent regarding deletion of names of respondent no. 2 to 6 is concerned, the names of the said respondents stand deleted as the BBA was executed between the complainant and the respondent company and also the dispute between them is civil in nature and Respondent company being a separate legal entity duly





incorporated under the Companies Act, 1956 should only be liable towards the complainant.

14. The authority has complete jurisdiction to decide the complaint in regard to 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.
15. Thus, the Authority, exercising powers vested in it under section 37 of The Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:
- (i) The respondent is duty bound to hand over the possession of the flat in question to the complainant on or before 31.03.2019 as per HRERA Registration Certificate.
 - (ii) The respondent shall pay prescribed rate of interest for every month of delay i.e. from the due date of possession, 29.10.2015 till the handing over of possession as per Rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 which states that interest payable shall be the State Bank of



India highest marginal cost of lending rate plus two percent i.e .10.45% p.a.

- (iii) That the respondent shall clear the liabilities of interest mentioned in sub para (ii) within 90 days from the date of decision and thereafter shall make the payment regularly to the complainant till the handing over of possession.
- (iv) The respondent shall allow the complainant to visit the project without any interference.

16. The order is pronounced.

17. Case file be consigned to the registry.




(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

