

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 19.09.2018
Complaint No.	287/2018 Case titled as Mr. Girish Goswami V/s M/s Ramprastha Sare Realty Pvt. Ltd.
Complainant	Mr. Girish Goswami
Represented through	Complainant in person.
Respondent	M/s Ramprastha Sare Realty Pvt. Ltd.
Respondent Represented through	Shri Manoj Kumar, Advocate for the respondent.
Last date of hearing	30.8.2018
Proceeding Recorded by	

Proceedings

Arguments advanced by the counsel for both the parties heard. It has been stated by the counsel for respondent that (i) the project is registered (ii) the date of completion of construction is 31.3.2019 (iii) work is going on at the site and as such, amount is not refunded to the complainant. However, he shall be entitled for the prescribed rate of interest on account of delayed possession. Besides this, if under any circumstances the builder is unable to hand over the possession of the flat on the committed date i.e. 31.3.2019, in that case, the buyer shall be entitled for refund of the deposited amount alongwith prescribed rate of interest @ 10.45%. The builder shall also be penalized under the provisions of Section 63 of the Real Estate (Regulation &

Development) Act 2016. The complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
19.09.2018

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

Complaint No. : 287 of 2018
Date of First
Hearing : 17.07.2018
Date of Decision : 19.09.2018

Mr. Girish Goswami, R/o D-701, Rail Vihar,
Sector-15, Part-2, Gurugram

...Complainant

Versus

Ramprastha Sare Realty Private Limited
(Name changed to M/s Sare Gurugram
Private Limited)
E-7/12 LGF, Malviya Nagar, New Delhi
South Delhi 110017 IN
Presently at Plot No.46, Udyog Vihar, Phase-
IV, Gurugram-122015

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Sh. Himanshu Raj, proxy
counsel
Sh. Ashish Chopra, proxy
counsel

Advocate for the complainant

Advocate for the respondent



ORDER

1. A complaint dated 18.05.2018 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. Girish Goswami against the promoter, Ramprastha Sare Realty Private Limited (name changed to M/s Sare Gurugram Private Limited) on account of violation of clause 3.3 of the flat buyer's agreement executed on 15.02.2013 for unit no. T151705 in the project "Green ParC2", Crescent ParC for not giving possession on the due date 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	"Green ParC2", Crescent ParC in sector 92, Village Wazirpur and Mewka, Gurugram
2.	Unit no.	T151705
3.	Project area	48.818 Acres
4.	Registered/ not registered	Registered (270 of 2017)
5.	DTCP license	44 of 2009, 68 of 2011
6.	Date of booking	04.10.2012
7.	Date of flat buyer's agreement	15.02.2013
8.	Total consideration	Rs. 63,34,090/-
9.	Total amount paid by the complainant	Rs. 62,58,924/-
10.	Payment plan	Construction Linked Plan
11.	Date of delivery of possession.	Clause 3.3- 36 months from date of commencement of construction



		(10.01.2013 + 6 months grace period i.e. 10.07.2016)
12.	Delay of number of months/ years upto 19.09.2018	2 years 2 months
13.	Penalty clause as per flat buyer's agreement dated 15.02.2013	Clause 3.3- Rs.5/- per sq. ft. per month

3. As per the details provided above, which have been checked as per record of the case file, a flat buyer's agreement is available on record for unit no. T151705 according to which the possession of the aforesaid unit was to be delivered by 10.07.2016. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance on 17.07.2018. The case came up for hearing on 17.07.2018, 30.08.2018 and 19.09.2018. The reply has been filed on behalf of the respondent on 27.08.2018.

Facts as per the complaint

5. On 04.10.2012, the complainant booked a unit in the project named "Green ParC2", Crescent ParC in sector 92, village Wazirpur and Mewka, Gurugram by paying an advance amount of Rs 5,45,334/- to the respondent. Accordingly, the complainant was allotted a unit bearing T151705 on the 17th floor.



6. On 15.02.2013, flat buyer's agreement was entered into between the parties wherein as per clause 3.3, the construction should have been completed within 36 months from the commencement of construction+ 6 months grace period, i.e. 10.07.2016 . However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of almost 90% of the total sale price via all instalments demanded by the respondent amounting to a total of Rs 62,58,924/-.
7. The complainant submitted that six months before the date of booking, a similar flat with same area of 1261 sq. ft. was booked for another party for an amount of Rs.57,04,000. While, six months later, the builder charged an extra amount of Rs. 6,30,090/- from the complainant.
8. As per clause 3.3 of the flat buyer's agreement, the company proposed to hand over the possession of the said unit by 10.07.2016. The clause regarding possession of the said unit is reproduced below:

"3.3- The company shall endeavour to offer possession of the said flat within a period of 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 the 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 receipt of all approvals from the concerned authorities. The company shall be entitled to 6 months additional period in the event there is a delay in handing over possession. However, in case of delay beyond a period of 6 months and such delay is attributable to the company, the company shall be liable to pay compensation @ Rs. 5.00 per sq. ft. per month of the super area of the said flat for the period of further delay.”

Issues raised by the complainant

- I. Whether the respondent is liable to refund along with interest on the total amount of Rs 62,58,924/- paid by complainant?
- II. Whether the respondent is liable to pay compensation for delay-in-possession?

Relief sought

- I. The respondent be directed to pay interest @ 18% per annum from the promised date of possession, i.e. 10.07.2016.
- II. The respondent be directed to refund the amount of Rs.62,58,924/- with 18% interest.
- III. The respondent be directed to repay the rent from 15.02.2016 till date @ 25,000/- per month approximately.

Respondent's reply

10. The respondents submitted that the project titled “Green ParC2”, Crescent ParC has been registered with Haryana Real Estate regulatory authority, Panchkula and Registration Certificate bearing Memo no. HRERA-454/2017/1294 dated 9.10.2017 with Registration No. 270 of 2017 dated 09.10.2017



has been issued by the HARERA whereby the promoter has been allowed to complete the project till 31.03.2019. Therefore, the complaint is premature.

11. The respondents submitted that the RERA Act or the rules nowhere declares the terms and conditions of the existing FBA for sale null or void and therefore, the terms of FBA should not be selectively enforced. If the developer is expected to complete the project as per the timeline given under the agreement, then the delay compensation or cancellation/surrender by the allottee as well as refund should also be according to the agreement. Also, both the parties are bound to follow the FBA entered between them.
12. The respondent further submitted that the complainant has taken a loan from State Bank of India and the loan was sanctioned vide Sanction letter dated 08.09.2015 and as per the terms and conditions of the loan, the unit of the complainant has been mortgaged in favour of the SBI and the SBI shall have first lien over the unit for the due repayment of the loan. As per the loan agreement, in the event of any default in the repayment of loan or the borrower (complainant) committing any other default which makes him liable for repayment of the entire amount outstanding, the builder shall, at the request of SBI, be under an obligation to not deliver the possession to the borrower and/or cancel the booking and pay all amounts received by the builder on behalf of the borrower to SBI including also any amount paid by the borrower to the builder.



13. It was submitted by the respondent that the complainant delayed the payment of instalments thereby causing loss to the respondent and obstructing the smooth construction process. Various reminders were issued to the complainant for payment on 23.01.2013, 18.02.2013, 8.07.2013, 15.11.2016.

14. Regarding the issue raised by complainant citing selling of same size unit at a higher price after 6 months, it is submitted that in trade practice selling price of units are discretion of the developer which depends upon various factors including market conditions and therefore, the issue regarding price is unnecessarily raised by the complainant.

Issues decided

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

15. In regard to the first issue raised by the complainant, the promoter undertakes to hand over the possession till 31.03.2019 as per the RERA registration. Thus, keeping in mind the interest of other allottees it will be unjust to cancel the allotment. However, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, 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.

16. In regard to the second issue raised by the complainant, the complainants can seek compensation before the adjudicating officer.
17. Regarding the relief of rent sought by the complainant, the respondent cannot be made to pay the rent paid by the complainant since 15.02.2016. For the delay of delivery of possession on the part of the respondents, they will be liable to pay interest. The authority has issued detailed order in the subsequent paras.
18. As the possession of the flat was to be delivered by 10.07.2016 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 Haryana 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.”

19. The complainant made 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 by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation 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.

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

Findings of the authority

21. **Jurisdiction of the Authority-** 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 complainants at a later stage.
22. The due date of possession was 10.07.2016 and the possession has been delayed by two years two months and nine days till the date of decision. 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 3.2 of flat buyer's 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.”

23. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that as per the RERA registration of the respondent, they have committed a revised time up till 31.03.2019 for handing over the possession to the allottees. However, the respondent is bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainants, i.e. Rs. 62,58,924/- for every month of delay on the 10th of every succeeding month from the due date of possession, i.e. 10.07.2016 till the handing over the possession of the unit on or before 31.03.2019. The respondent is also directed to pay the amount of interest at the prescribed rate from 10.07.2016 to 19.09.2018 on the deposited amount within 90 days from the day of this order. The complainants must wait till 31.03.2019 for the respondent to fulfil its commitment and deliver the possession and in case of any default in the handing over of possession, penal consequences may follow under section 63 of the RERA Act, and the complainants can



approach this authority for redressal of their grievance. Further, the complainants must also complete the payment due on their part.

Decision and directions of the authority

24. 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 in the interest of justice and fair play:

- (i) The respondent is directed to give the physical possession of the said flat to the complainants on the date committed by the respondent for handing over the possession, i.e. 31.03.2019.
- (ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from 10.07.2016 to 19.09.2018 on the deposited amount within 90 days from the day of this order and thereafter, on the 10th of every succeeding month.
- (iii) If the possession is not given on the date committed by the respondent, i.e. 31.03.2019 then the complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.



25. The complaint is disposed of accordingly.
26. The order is pronounced.
27. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

HARERA
GURUGRAM

