

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 23.08.2018
Complaint No.	227/2018 Case titled as Mr. Vikas Agarwal and Another V/s M/s Sare Gurugram Pvt. Ltd.
Complainant	Mr. Vikas Agarwal and Another
Represented through	Shri Sushil Yadav, Advocate for the complainant.
Respondent	M/s Sare Gurugram Pvt. Ltd.
Respondent Represented through	Shri Manoj Kumar, Advocate for the respondent.
Last date of hearing	11.7.2018

Proceedings

The project is not registered.

It was brought to the notice of the authority that the project is registerable but so far it has not been registered which is in violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent has been asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings should not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act ibid, whereunder the penalty amount may extend upto 10% of the estimated costs of the Project.

Counsel for the respondent has filed an affidavit regarding the status of the project.

Arguments advanced by the learned counsel for both the parties have been heard.

The learned counsel for the respondent has made a statement that the construction of the project is almost completed and they shall offer the possession of the unit to the complainant on **31.3.2019** so, the amount should not be refunded to the complainant. The agreement between the parties was executed and signed on 28.8.2012 and the possession was to be handed over to the complainant within 36 months + 6 months of grace period i.e. 28.2.2016 but the respondent has failed to give the possession on the due date. The complainant has stated that he has paid Rs.92,96,959/- out of the total sale consideration of Rs.93,22,500/- to the respondent and no possession was delivered to him by the respondent. The respondent is bound to give interest at the prescribed rate i.e. 10.45% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 1.3.2016 till the handing over the possession of the unit. If the possession is not given on the date committed by the respondent i.e. **31.3.2019** then the complainant shall be at liberty to further approach the Authority for the remedy as provided under the provisions i.e. 19 (4) of the Act *ibid*. The complaint is disposed of accordingly. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
23.8.2018

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

Complaint No. : 227 of 2018
Date of First : 05.06.2018
Hearing :
Date of Decision : 23.08.2018

Mr. Vikas Agrawal (C1)
Smt. Radhika Agrawal (C2)
R/o J-4/24, DLF Phase 2, Gurugram-122011 **...Complainants**

Versus

M/s SARE Gurugram Private Limited (formerly
known as Ramprastha SARE Realty Pvt. Ltd.)
Regd. Office: E-7/12, LGF, Malviya Nagar, New **...Respondent**
Delhi-110017

CORAM:

Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Sushil Yadav Advocate for the complainants
Shri Manoj Kumar Advocate for the respondent

ORDER

Complaint

1. A complaint dated 07.05.2018 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 complainants Mr. Vikas Agrawal and Smt. Radhika Agrawal, against the promoter M/s



SARE Gurugram Private Limited (formerly known as Ramprastha SARE Realty Pvt. Ltd.), on account of violation of clause 3.3 of the flat buyer agreement executed on 28.08.2012 in respect of apartment unit no. T16-1902 on 19th Floor, described as below for not handing over possession on the due date i.e. by 10.07.2016 which is an obligation under section 11(4)(a) of the Act *ibid*.

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

3.	Name and location of the project	"Green ParC" at Crescent ParC2, Sector 92, Gurugram
4.	Unit No.	T16-1902 on 19th Floor
5.	Project area	48.818 Acres
6.	Registered/ Not Registered	Registered (270 of 2017)
7.	DTCP license	44 of 2009, 68 of 2011
8.	Date of booking	17.02.2012
9.	Date of flat buyer agreement	28.08.2012
10.	Total consideration	Rs. 57,72,945/-
11.	Total amount paid by the complainants	Rs. 55,79,000/-
12.	Payment plan	Construction Linked Payment Plan
13.	Date of delivery of possession	Clause 3.3- 36 months from the date of commencement of construction(10.01.2013) + 6 months grace period, i.e. 10.07.2016
14.	Delay of number of months/ years up to 23.08.2018	2 years 1 month



15.	Penalty clause as per flat buyer agreement dated 28.08.2012	Clause 3.3- Rs. 5 per sq ft. per month
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3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A flat buyer agreement is available on record for the aforesaid residential space according to which the possession of the said unit was to be delivered to the complainants by 10.07.2016 and the respondent has failed to deliver the possession of the said unit.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 05.06.2018. Thereafter, the case came up for hearing on 11.07.2018 and 23.08.2018. The reply has been filed on behalf of the respondent on 03.07.2018.

Facts as per the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainants are that on 17.02.2012, a residential space bearing Unit No. T16-1902 on 19th Floor measuring 1261 sq. ft. in the project "Green ParC" at Crescent ParC2, Sector 92, Gurugram was booked by the first buyer paying an amount of Rs. 5,00,000 towards a total consideration of



Rs. 57,72,945. Thereafter, on 17.04.2012, the allotment letter was issued to the first buyer and Flat buyer agreement was executed on 28.02.2012. Subsequently the flat was transferred from first buyer to the complainants on 29.07.2013 and the allotment letter was also endorsed in the name of the complainants. The complainants made a payment of Rs. 55,79,000/- as and when demanded by the respondent, amounting to 95% of the total cost of the project. An additional VAT amount of Rs. 57,000/- was paid in June 2017, although the complainants were not at all convinced with the VAT demand but still, they paid the same.

6. The complainants took a home loan to repay the demands of the aforesaid apartment. The complainants submitted that from February 2016, the respondent company has stopped the work on the site and are not carrying out any internal or external work.



7. The complainants submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants. Complainants further submitted that given the inconsistent and lack of

commitment to complete the project on time, the complainants decided to terminate the agreement.

8. As per clause 3.3 of the flat buyer 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 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 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 complainants

- I. Whether the respondent should cancel the allotment and pay back the entire amount paid by the complainants along with interest @ 18% per annum?
- II. Whether the additional amount taken by builder for VAT needs to be refunded by the builder?



III. Whether the respondent should pay the rent paid by the complainants from January 2016?

Relief sought by the complainants

- I. To direct the respondent to pay interest on the entire amount paid by the complainants to first buyer as well as to the respondent @ 18% p.a. since 29th July 2013.
- II. To refund entire amount paid by the complainants to first buyer as well as to builder towards basic cost, amenities, Service tax and VAT demand.
- III. To repay EMI (currently Rs. 42,510 per month) on Home loan taken by the complainants to purchase the flat. Currently loan amount is Rs.44.50 Lac for the said flat.
- IV. To repay the rent paid by the complainants from 10 Jan 2016 till date @ Rs.20000 per month (on average basis).

Respondent's Reply

9. The respondent submitted that the project in question, i.e. "Green ParC2", Phase IV, Sector 92, Gurugram has been registered with Haryana Real Estate Regulatory Authority, Gurugram and Registration Certificate bearing no. 270 of 2017 dated 09.10.2017 has been issued. This registration certificate is valid for a period till 31.03.2019 and as per



Section 5(3), the registration granted under this section shall be valid for a period provided by the promoter under sub-section (c) of clause / of sub-section (2) of Section 4 for completion of the project or phase thereof, as the case may be. Therefore, the respondent has been allowed to complete the project by 31.03.2019.

10. The respondent in para 5 of the reply admitted that initially the flat was allotted to Mr. DharamVir Bhugra and the parties entered into a legally binding flat buyer's agreement on 28.08.2012. However, on request of the initial allottee, the allotment was assigned in favour of the complainants and the FBA was also endorsed in favour of the complainants. The respondent submitted that the parties are bound to follow the terms and conditions of the FBA and in case of any delay in possession, necessary provisions for payment of compensation to allottee have been made therein. Therefore, any relief beyond the terms of the agreement is unjustified.



11. The respondent submitted that for any delay in the delivery of the project, appropriate provision for payment of delay compensation by the developer to the allottee has been made under clause 3.3 of the FBA.

12. It is submitted that the Real Estate (Regulation and Development) Act, 2016 or the Haryana Real Estate (Regulation and Development) Rules, 2017 nowhere declares the terms and conditions of the existing FBA(executed prior to the date of the Act/Rules) null or void, therefore the terms of the FBA should not be selectively enforced, i.e. If the developer/respondent is expected to complete the project as per the timeline given under the FBA, then the delay compensation, or cancellation/surrender of the allotment by the allottee/complainants and refund should also be according to the FBA.
13. Under para 6 of the parawise reply, the respondent submitted that as per clause 2.3 of the FBA, if the allottee/complainants fails to make payments, the complainants shall be liable to pay interest thereon @ 18% per annum from the due date of instalment till the date of actual payment. The terms of payment of interest were always there, if complainants had any issue with the same, it should have been raised before signing of the agreement.
14. It is denied that as per the agreement, within 36 months from 10.01.2013 (commencement of construction) the respondent will offer possession. It is denied that the



possession date was 10.01.2016. The respondent submitted that as per clause 3.3, the respondent shall endeavour to offer the possession of the unit within a period of 36 months from the date of commencement of the construction and subject to timely payment by the allottee/complainants towards the basic sale price and other charges, as demanded in terms of the FBA. The time frame provided for the possession was tentative and shall be subject to force majeure and timely and prompt payment of all instalments and completion of all formalities required and timely receipt of all approvals from the concerned authorities. It is submitted that as per the statement of accounts, the complainants were not regular in payment for instalments and had to pay interest for delay.

15. The respondent denied that since February 2016, the construction work on the site had been stopped. The respondent submitted that the VAT demand was legally raised and the same was paid by the complainants, therefore it has wrongly been stated that the complainants were not convinced with the demands. The respondent further submitted that taking loan for buying the unit as alleged by the complainants and paying monthly EMI of Rs. 42,510/- has nothing to do with allotment of unit or the



respondent or the delay in construction, hence the respondent in no situation be liable of any account for any such liability of the complainants.

Arguments advanced on behalf of the parties

16. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The complainants submitted that as per the agreement, the respondent was supposed to hand over the possession within 36 months from the date of commencement of construction along with 6 months grace period, i.e. 10.07.2016. However, the respondent defaulted in delivering the possession and also, changed its bank account and company name also. It appears to be motivated with some legal and criminal intent to become defaulter. Further, the VAT charged by the respondent was additional. The complainants submitted that the respondent must be made liable to pay the rent EMI of Rs. 42,510/- paid by them against the loan taken from the date when the possession was due, i.e. 10.07.2016 up till the date of actual delivery of possession.

17. The respondent contended that the construction of the project is almost completed and they shall offer the



possession of the unit to the complainants on 31.03.2019 as specified in the RERA registration, so the amount should not be refunded to the complainants. Further, the VAT charged was a legal charge and there was no malicious intent in charging it and the loan was taken by the complainants from the back and the respondent cannot be made liable in any manner to pay the EMI.

18. The respondent filed an affidavit on 23.08.2018 affirming the status of the project.
19. As the possession of the unit was to be delivered by 10.07.2016 including the 6 months grace period, as per the FBA, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) & (b) 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.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

20. The complainants 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."

21. The complainants 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."

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:

22. In regard to the first issue raised by the complainants, 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.



23. In regard to second issue raised by the complainants, the respondent has submitted that the VAT was charged legally and the same has been paid by them to the government authorities.
24. As per the third issue raised by the complainants, the respondent cannot be made to pay the rent paid by the complainants since January 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.

Inferences drawn by the authority

25. 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.



26. 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. 55,79,000/- 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 23.08.2018 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 and the complainants can approach this authority for redressal of their grievance. Further, the complainants must also complete the payment due on their part.



27. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Decision and directions of the authority

28. 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 23.08.2018 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.

29. The complaint is disposed of accordingly.
30. The order is pronounced.
31. 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

