

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

Complaint No. : 182 of 2018
Date of first hearing: 24.05.2018
Date of Decision : 29.08.2018

Ms. Manju Gaur
R/o. B-159, Yojna Vihar, Delhi.

Complainant

Versus

M/s Ramprastha Promoters & Developers Pvt.
Ltd.
(Through its directors)
Office address: 114, Sector 44, Gurugram,
Haryana-122002.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri SubhashChander Kush

Chairman
Member
Member

APPEARANCE:

Shri Devender Bhandari Authorised person on behalf of
the complainant
Shri Kuldeep Parashar Advocate for the complainant
Shri Shobhit Maheshwari Authorised representative on
behalf of the respondent.
Shri Dheeraj Kapoor Advocate for the respondent



ORDER

1. A complaint dated 20.04.2018 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 Ms. Manju Gaur, against the promoter Ramprastha Promoters & Developers Pvt. Ltd., on account of violation of the clause 11.a of plot buyer agreement executed on 29.09.2015 in respect of residential plot described as below for not handing over possession on the due date i.e. 29th September 2018 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	“Ramprastha City”, Sector 92, 93 & 95, Gurugram, Haryana.
2.	RERA registered/not registered	Not registered but applied for registration on 01.08.2017
3.	DTCP license no.	44 of 2010
4.	Unit/residential plot no.	092, block D.
5.	Residential plot measuring	500 sq. yds.
6.	Booking amount paid	Rs.32,50,000/- acknowledged vide receipt dated 17.8.2012
7.	Plot buyer agreement executed on	29 th September 2015
8.	Total consideration amount as per agreement dated 29.09.2015	Rs.71,50,000/-
9.	Total amount paid by the complainant till date	Rs.32,50,000/- + Rs.28,80,000/- = Rs.61,30,000/-
10.	Percentage of consideration amount	Approx. 85.73 percent
11.	date of delivery of possession as per clause 11.a of plot buyer agreement, 30 months from the	29 th September 2018



	date of execution of this agreement + 6 months of grace period.	
12.	Delay in handing over possession till date	Premature
13.	Penalty clause as per plot buyer agreement dated 29.09.2015	Clause 11.d of the agreement i.e. Rs.90/- per sq. yard per month on the full area of the said plot.

3. The details provided above have been checked as per record available in the case file. A plot buyer agreement is available on record for the aforesaid unit according to which the possession of the same is to be delivered by 29th September 2018. The respondent company has not delivered the possession till date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent on 30.04.2018 for filing reply and for appearance. The respondent appeared on 24.05.2018. The case came up for hearing on 24.05.2018, 11.07.2018, 21.08.2018 & 29.08.2018. The reply has been filed on behalf of the respondent on 20.06.2018 which has been perused.

Facts of the complaint

5. Briefly stated, the facts of the complaint are that on 17.08.2012, the complainant against the registration of a residential plot measuring 500 sq. yd. at Sector 37D,



Ramprastha City, Gurugram paid a sum of Rs.32,50,000/- vide cheque dated 18.08.2012 against the registration. Thereafter, the promoter did not pursue other formalities for the said allotment. When the complainant approached the developer on 19.10.2013 about the allotment and possession of the said plot, in response, the said developer offered another plot with the same area (500 sq. yd.) at another site at Sector 92, 93 & 95, Ramprastha City, Gurugram. The complainant had no option but to take it.

6. The complainant submitted that he received preliminary allotment letter with back dated i.e. 17.08.2012 and subsequently after much probing and requesting, the developer and the complainant executed an agreement dated 23.09.2015. The allotment letter and welcome letter were issued on 29.09.2015. Also, the plot buyer agreement was executed on 29.09.2015. The complainant submitted that as per the said agreement, the developer shall endeavour to offer possession of the said plot within 30 months from the date of execution of this agreement. Vide cheque dated 23.09.2015, the complainant paid a sum of Rs.28,80,000/- and the same was acknowledged by the respondent vide receipt dated 29.09.2015. The complainant submitted that till date possession has not been offered and the status of the



project is unclear as the developer has refused to answer the complainant's queries.

7. Issues raised by the complainant are as follow:

- i. Whether the respondent has initially offered a residential plot of area 500 sq. yd. at Sector 37D, Ramprastha City, Gurugram and later after receiving tentative registration amount, the respondent has allotted a different plot with same area at sector 92, 93 & 95, Gurugram.
- ii. Whether the complainant is entitled to compensation regarding the site shift of the plot from Sector 37D to Sector 92, 93 & 95, even though the circle rates of both the sites are significantly different.
- iii. The respondent is providing no update about the progress of the said plot at Sector 92, 93 and 95 or the date of possession.

8. Relief sought

In the present complaint the complainant is seeking the following reliefs:

- i. The complainant is seeking possession of the allotted residential plot at the original site at Sector-37D, Ramprastha City, Gurugram instead of Sector 92, 93 and 95, Gurugram.



- ii. If the developer is unable to provide the said plot at Sector-37D, the plot of 500 sq. yd. may be allotted to the petitioner at Sector-92, 93 and 95, Ramprastha City provided the developer compensates the petitioner in accordance with the difference in circle rates of both the site under consideration.
- iii. The respondent shall provide the complainant with the possession letter of the plot so that the registry of the said plot could be performed on priority.
- iv. As per the agreement letter, the respondent shall compensate the petitioner with the delay in possession charges as per agreement.
- v. The complainant shall be provided with RERA details of the said project so that the complainant can track the progress of the project.

Respondent's Reply:

9. The respondent has raised various preliminary objections and submissions challenging the jurisdiction of this hon'ble authority. They are as follow:
 - i. The complaint for compensation and interest under section 12, 14, 18 and 19 of the Act ibid is maintainable only before the adjudicating officer.



- ii. The complaint is not supported by any proper affidavit with a proper verification. In absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.
- iii. The respondent also stated that the statement of objects and reasons as well as the preamble of the said act clearly states that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate project. In the present complaint, the complainant is an investor having invested in 2 plots in the same project and never had intention to buy the plot for her personal use.
- iv. The complainants from the date of booking till the filing of complaint i.e. for around 6 years, never ever raised any issue and on the contrary kept on making the payment.
- v. The respondent has submitted that despite several adversities, the respondent continued with the development of the said project and should be able to apply for occupation certificate for the apartment in question by 31.12.2025 (as mentioned at the time of



application dated 01.08.2017 for registration of the project with HRERA).

- vi. The authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the plot buyer's agreement signed by the complainant. It is matter of record that no such agreement as is referred under the provisions of the said Act or said rules has been executed between the complainant and the respondent. Rather, the agreement that has been referred to is dated 29.09.2015 which was executed much prior to coming into force of the said Act or said Rules.

Reply on Merits

10. The respondent has admitted the fact as matter of record that the welcome letter and allotment letter were issued on 29.09.2015 and the plot buyer agreement was also executed on 29.09.2012.
11. The respondent denied the fact that the payment made on 17.08.2012 was against the registration of a residential plot measuring 500 sq. yd. at Sector 37D, Ramprastha City, Gurugram. Also, the respondent denied the fact that in response to the letter dated 19.10.2013, the respondent



offered another plot to the complainant with the same area (500 sq. yd.) at another site at Sector 92, 93 & 95, Ramprastha City, Gurugram. Further, the respondent denied that the allotment letter was back dated to 17.08.2012 and the complainant be put to strict proof for the same.

12. The respondent submitted that there was no question of the complainant being entitled to the allotment of any plot in Sector 37D or was offered another plot in Ramprastha City at Sector 92, 93 & 95, Gurugram. It is submitted that the payment made on 17.08.2012 was against the complainant's request for tentative registration of 500 sq. yd. plot in future potential project i.e. Ramprastha City at Sector 92, 93 & 95, Gurugram.

13. The respondent also denied that in terms of the plot buyer agreement dated 29.09.2015, the respondent made any commitment to offer possession of the plot within 30 months from the date of agreement or that the said limit expired on 23.03.2018. The respondent submitted that the proposed estimated time of handing over the possession of the said apartment was 30 months + 6 months i.e. 36 months from the date of execution of BBA and not 30 months from the date of agreement, as alleged by the complainants.



14. The respondent also submitted that the said proposed time period of 36 months has not expired and the complaint is therefore pre-mature and is liable to be dismissed on this ground alone.
15. The respondent further submitted that section 19(4) of the said Act provides that the allottee shall be entitled to claim the refund of the amount paid along with interest at such rates as may be prescribed and the compensation in the manner as provided in the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment as the case may be, in accordance with the terms of agreement for sale. Also, section 19(3) provides that the allottee shall be entitled to claim the possession of the apartment as per the declaration given by the promoter under section 4(2)(1)(C) of the Act *ibid*. Thus, conjoint reading of both the provisions as aforementioned, shows that the entitlement to claim the possession or refund would only arise once the possession has not been handed over as per declaration given by the promoter under sub clause (c) of clause (1) of subsection 2 of section 4. In the present case, the respondents had made a declaration in terms of Section 4(2)(1)(c) that the respondent would complete the project by



31.12.2025. Thus, no cause of action can be said to have arisen to the complainant.

16. The respondent also submitted that projects, such as the one in question, are huge projects and involve putting in place huge infrastructure and is dependent on timely payment by all the allottees. Such huge projects do take some reasonable time for completion and timelines are not absolute. The parties have agreed to a specific condition as per clause 11.d of the plot buyer agreement that in case the respondent fails to offer possession of the plot within the committed period, it shall be liable to pay delay compensation @ Rs.90/- per sq. yd. per month for the period of delay beyond 36 months or such extended periods as permitted under plot buyer agreement. Such a clause would not have been agreed to by the complainants had the parties not envisaged time for offer of possession beyond the committed period. The parties thus specifically envisaged a situation where time for possession may be extended beyond the committed period and remedy thereon is also specifically provided in the self-contained document (plot buyer agreement), which the complainants signed and executed with open eyes and after understanding all the terms and conditions.



Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

17. First two issues raised by the complainant cannot be considered by the authority as there is no evidentiary proof that the booking amount paid by the complainant is against the tentative registration was for the plot in Sector 37D. The receipts are indicative that the registration was being done against the future project of the promoter. Also, a separate application is to be filed before adjudicating officer for seeking compensation. In furtherance of the above decided issue, the first relief sought by the complainant cannot be allowed.
18. With respect to the third issue raised by the complainant, as per clause 11.a of plot buyer's agreement, the possession of the plot was to be handed over within 30 months plus 6 months grace period from the date of execution of this agreement. The clause regarding the possession of the said unit is reproduced below:

"11.Schedule for Possession

(a) The company shall endeavour to offer possession of the said plot, within thirty (30)months from the



date of execution of this agreement subject to timely payment by the intending allottee(s) of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan

(b) ...

(c) ...

(d) Failure of company to offer possession and payment of compensation

In the event the company fails to offer possession of the said plot, within 30 months from the date of execution of this agreement then the expiry of grace period of 6 months from the said 30 months subject to the intending allottee(s) having made all the payments as per the payment plan and subject to the terms, conditions of this agreement and barring force majeure circumstances, the company shall pay compensation to the intending allottee(s) calculated at the rate of Rs.90/- per sq. yard per month on the full area of the said plot which parties have agreed is just and equitable estimate of the damages that the intending allottee(s) may suffer and the intending allottee agreed that he/they shall not have any other claims/rights whatsoever. The adjustment of compensation shall be done at the time of execution of conveyance deed."

19. Accordingly, the due date of possession is 29th September 2018. Although the due date of possession has so far not been crossed, the interest for the delayed possession as per section 18(1) of the Act has not accrued. The delay compensation payable by the respondent @ Rs. 90/- per sq. yard per month on the full area of the said plot as per Clause 11.d of the plot buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by



the respondent is 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.”

Findings of the authority

20. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.

21. In line with the determination of the aforesaid issues, the relief sought by the complainant becomes superfluous as the complaint is premature. In case the respondent is unable to give possession by the due date, as agreed by both the



parties, then as per Section 18 (1) of the Act ibid, the promoter shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.45% p.a. In case of failure of the promoter to pay interest for every month of delay at the prescribed rate by the 10th of subsequent months after the due date of possession, complainant shall be at liberty to approach this authority and respondent shall be liable to face penal consequences under the Act.

22. Application for registration has already been filed with the authority. The information is now to be provided in the new format for which four weeks time was granted to the respondent. Meanwhile keeping in view the unreasonable date of completion of the project, the promoters have renewed the date of completion of project and it is now being reduced drastically 31.12.2020.

23. The order is pronounced.

24. Case file be consigned to the registry.



(Samir Kumar)
Member

(SubhashChander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 29.08.2018
Complaint No.	182/2018 Case titled as Mr. Manju Gaur V/S M/S Ramprastha Promoters & Developers Pvt. Ltd
Complainant	Mr. Manju Gaur
Represented through	Shri Devender Bhandari on behalf of the complainant with Shri Kuldeep Bhandari, Advocate
Respondent	M/S Ramprastha Promoters & Developers Pvt. Ltd
Respondent Represented through	Shri Shobhit Maheshwari authorized representative with Shri Dheeraj Kapoor, Advocate for the respondent.
Last date of hearing	21.8.2018

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*, where under the penalty amount may extend upto 10% of the estimated costs of the Project.

An application for amendment of the complaint was submitted by the counsel for the complainant. Accordingly, the complaint stands amended to the extent that they are not pressing for compensation but only making a request to the authority for seeking direction regarding compliance of obligations as per Act, Rules and Regulations or agreement for sale.

Application for registration has already been filed with the authority. The information is now to be provided in the new format for which four weeks time was granted to the respondent. Meanwhile keeping in view the unreasonable date of completion of the project, the promoters have renewed the date of completion of project and it is now being reduced drastically 31.12.2020. The letter of allotment on page 13 of the paper book, does not clearly indicate the date of issue. Keeping in view the allotment letter of the same complainant in complaint No.183 of 2018, the date of allotment has been mentioned as 17.8.2012. The agreement between the parties was executed on 29.9.2015. As per clause 11 (a) read with clause 11 (d) of the agreement, the possession was to be handed over within a period of 30 months plus six months as grace period. Accordingly, due date of possession comes out to be 29.9.2018. As far as delay in handing over possession is concerned, this complaint is pre-mature. In case the respondent is unable to give possession by the due date, as agreed by both the parties, then as per Section 18 (1) of the Act *ibid*, the promoter shall be liable to pay interest for every month of delay at prescribed rate. In case of failure of the promoter to pay interest for every month of delay at the prescribed rate by

10th of subsequent months after the due date of possession, complainant shall be at liberty to approach this authority and respondent shall be liable to face penal consequences under the Act. Respondent is directed to submit a copy of approved demarcation plan to the authority. 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)
29.08.2018