

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

Complaint No. : 31 of 2018
Date of Institution : 05.03.2018
Date of Decision : 14.06.2018

Mr. Arijit Chakarbarti,
R/o. 56 Raja S.C. Mallick Road, Ekta Heights,
Flat 3A, Block 3, Jadavpur, Kolkata-700032,
West Bengal, India

Complainant

Versus

Ramprastha Sare Reality Pvt. Ltd.
(Now SARE Gurugram Pvt. Ltd.)
Regd. Office: B-100, 2nd Floor,
Nariana Industrial Area,
Phase-I, New Delhi-110028

Respondent

CORAM:

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

Chairman
Member
Member

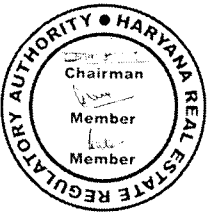
APPEARANCE:

Shri Vaibhav Suri
Shri Manoj Kumar

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 05.03.2018 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. Arijit Chakrabarti, against the promoter, Ramprastha Sare Reality Pvt. Ltd. (Now SARE Gurugram Pvt. Ltd.), on account of violation of the clause 3.3 of Builder Buyer Agreement executed on 14.11.2013 in respect of apartment described as below for not handing over possession on the due date i.e. 28th August 2017 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	"The Grand" forming part of Crescent ParC, Sector 92, Gurugram
2.	Flat/Apartment/Unit No.	G1-0401, 4 th floor
3.	RERA Registration No.	262 of 2017 dated 03.10.2017
4.	Date of completion as per RERA Registration Certificate.	30.09.2019
5.	Total consideration amount as per agreement dated 17.12.2015	Rs. 1,42,75,800/-
6.	Total amount paid by the complainant till date	Rs. 1,14,34,781/-
7.	Percentage of consideration amount	Approx. 30 Percent
8.	Date of delivery of possession as per Builder Buyer Agreement (40 Months + 6 months grace period from the date of commencement of Construction i.e 28.10.2013)	28 August 2017
9.	Delay of number of years / months / days till date	9 months 17 days
10.	Penalty Clause as per builder buyer agreement dated 17.12.2015	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
11.	Cause of delay in delivery of possession	No valid reason explained by the promoter for the delay.

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 by 28th August 2017. The respondent company has not delivered the possession till 14.06.2018. Neither they have delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the Saleable Area of the said flat for the period of such delay as per Clause 3.3 of builder buyer agreement dated 17.12.2015.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 24.04.2018. The case came up for hearing on 10.04.2018, 24.04.2018, 15.05.2018, 29.05.2018 & 14.06.2018. The reply has been filed on behalf of the respondent on 30.04.2018 which has been perused. The respondent was asked to file an affidavit regarding the status of the project and the same was filed on 29.05.2018 and thereafter the matter was adjourned for final orders on 14.06.2018. The complainant filed the written arguments 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 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 has 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 the construction of the project will be completed till 30.09.2019 as stated in RERA Registration Certificate and by that time they will be able to give possession to the complainant.

The complainant has submitted that he is not ready to take the possession due to poor quality material used in construction. In this regard, the authority asked the complainant to file a separate complaint for the same as the Authority cannot go beyond the relief sought by the complainant in the complaint.

The respondent also filed an affidavit dated 28.05.2018 affirming that the said unit falls under phase V of the project



and that the said phase is 64.3% complete and will handover possession on or before 30.09.2019.

6. As per clause 3.3 of Builder Buyer Agreement, the possession of the flat was to be handed over within 40 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 Forty (40) 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 Saleable Areas of the Said Flat for the period of further delay."

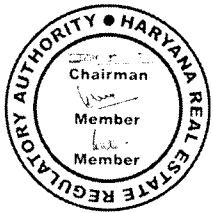


7. Accordingly, the due date of possession was 28th August 2017. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the saleable area of the said flat as per Clause 3.3 of Builder Buyer Agreement is held to be very

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 28th August 2017 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."

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 intervening circumstances, 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 65% 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. 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.

14. 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 30.09.2019 as per affidavit submitted by the respondent.
- (ii) The respondent shall pay prescribed rate of interest for every month of delay i.e from due date of possession 28.08.2017 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 10.15% p.a.
- (iii) That the respondent shall clear the liabilities of interest mentioned in sub para (ii) within 90 days from date of decision 14.06.2018 and thereafter shall make the payment regularly to the complainant till the handing over of possession.

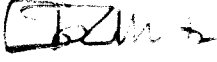


15. The order is pronounced.

16. 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

