

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

Complaint No. : 183 of 2018
First date of hearing: 24.05.2018
Date of Decision : 29.08.2018

Mr. Manoj Gaur, B-159, Yojna Vihar, Delhi

Complainant

Versus

M/s Ramprastha Promoters & Developers Pvt
Ltd
Regd Office: 114, Sector 44, Gurugram-122002

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Nishant Bhardwaj Complainant in person
Shri Karan Govel Advocate for the complainant
Shri Sandeep Choudhary 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 Mr. Manoj Gaur, against the promoter M/s Ramprastha Promoters & Developers Pvt. Ltd on account of violation of the clause 11(a) of the plot buyer's agreement executed on 23.09.2015



in respect of plot number 91, Block D, admeasuring 500 sq. yards in the project 'Ramprastha City" for not handing over the possession on the due date i.e. 23.12.2018 which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	Ramprastha City, Sector 92,93 and 95, Gurugram
2.	Apartment/unit no.	Plot no. 91, block D
3.	Flat measuring	500 sq. yards
4.	RERA registered/ not registered.	Unregistered
5.	Booking date	17.08.2012
6.	Date of execution of apartment buyer's agreement	29.09.2015
7.	Payment plan	Construction linked payment plan
8.	Basic sale price	Rs 36,00,000/-
9.	Total amount paid by the complainant till date	Rs.32,50,000/-
10.	Percentage of consideration amount	Approx. 90.27%
11.	Date of delivery of possession as per clause 11(a) of plot buyer's agreement (30 months + 6 months grace period from the date of execution of agreement)	29.09.2018
12.	Delay in handing over possession till date	No delay, pre mature complaint
13.	Penalty clause as per apartment buyer's agreement dated 29.09.2015	Clause 11(d) of the agreement i.e. Rs 90/- per sq. yard per month



1. The details provided above have been checked and found on record as provided in the case file. The above

mentioned project is a real estate project as per the definition given u/s 2 (zn) of RERA Act, 2016 which is reproduced as below:

2 (zn) "real estate project"

Real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances thereto.

3. The plot buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 29.09.2018. Neither the respondent has delivered the possession of the said residential plot till 29.09.2018 to the purchaser nor they have paid any compensation @ Rs 90 per sq. yard per month on the full area of the said flat for the period of such delay as per clause 11(d) of plot buyer's agreement dated 29.09.2015 which has not lapsed yet. Thus, the promoter has not failed to fulfil his obligations as there is no delay on the part of the promoter.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 24.05.2018. The case came up for hearing on 24.05.2018, 11.07.2018, 21.08.2018 and



29.08.2018. The reply has been filed on behalf of the respondent on 20.06.2018 and has been perused.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case that on 17.08.2012, the complainant made the payment to M/s Ramprastha Promoters & Developers Pvt. Ltd against registration of a residential Plot admeasuring 500 sq. yard at Sector 37D in the project "Ramprastha City" at a prime location.
6. On the same date, a cheque amounting to Rs 32,50,000/- was sent by the complainant to the respondent as the registration fees. The respondents had committed provide detailed site plan and time schedule for development and completion of the project, but even after repeated calls and communications, the promoter did not deliver the possession.
7. On 19.10.2013, the complainant requested the promoter about the allotment and possession of the said plot. In response, the respondent to offered alternative plot with the same area of 500 sq. yard at a new site i.e. Sector 92,93 and 95, Ramprastha City to which the complainant had no other option to agree as the complainant's hard earned money is at stake.



8. On the same date the promoter received a “Preliminary allotment letter” with back dated i.e. 17.08.2012. Thereafter, the complainant received no further information from the promoter about the completion or possession of the project, despite of paying all the payments on time.
9. At a very later stage the promoter offered the “Agreement letter” on 23.09.2018 and an allotment letter and welcome letter on 29.09.2018.
10. According to Clause 11 (a) of the plot buyer’s agreement, the promoter had made the commitment to provide the offer of possession of the plot within 30 months from the date of execution of the agreement plus 6 month of grace period i.e. 29.09.2018. Clause 11 (a) is reproduced below:

Clause 11 Schedule of possession

The company shall endeavour to offer possession of the said plot, within 30 months from the date of execution of this agreement subject to timely payment by the intending allottee of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan.

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 after the expiry of grace period of 6 months from the said 30 months.....

11. The complainant tried to contact the promoter to enquire about the progress of the project and the date of completion, but didn’t get any positive response till date. The promoter



has been in a state of denial and even not attending to the calls of the complainant, thus the present complaint.

ISSUES TO BE DECIDED

- Whether the respondent is justified in handing over the possession of a separate residential plot which is far away and also undeveloped in contrary to what was promised to the complainant?
- Whether the respondent is liable for not providing the updates about the progress of the said plot at Sector 92,93 and 95 or the date of possession?

RELIEF SOUGHT

- Direct the respondent to allot the residential plot of 500 sq. yard at the original site at 37D, Ramprastha City instead of Sector 92,93 and 95, Gurugram.
- Direct the respondent to allot the said original plot no. with the super area of 500 sq. yards at Sector 92, 93 and 95 Gurugram.
- Direct the respondent to provide the complainant the possession letter of the plot, so that the conveyance deed of the said plot could be drafted on priority.
- Direct the respondent pay the interest on the delayed period.

RESPONDENT'S REPLY

12. The respondent submitted that as the project is located in Sector 92, 93 and 95, Gurugram therefore the hon'ble



authority has territorial jurisdiction to entertain the present complaint.

13. The respondent submits that the present complaint is u/s 12, 14, 18 and 19 of the Act, will lie before the adjudicating officer as the present complaint relates to interest and compensation which cannot be decided by the authority and is subject to the jurisdiction of the adjudicating officer.
14. The respondent submits that even though the project as mentioned above is covered u/r 2(1) (o) under the definition of “ongoing projects” and the registration has already been applied on 31.07.2017 and the registration certificate is still awaited, the complaint is still required to be filed before the adjudicating officer u/r 29 of the Haryana rules, 2017 and not before the Hon’ble authority.
15. The respondent submits that the complaint is not supported by any proper affidavit and with proper verification. In the absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.
16. The respondent submits that the preamble of the said Act is enacted for effective consumer protection and to protect the interest of investors. As the said Act has not defined the term “consumer” provide under the Consumer Protection Act, 1986. Thus, the complainant here is an investor and not a



consumer, thus the authority has no jurisdiction to entertain the present complaint.

17. The respondent submits that the complainant has concealed a material fact that is, he has invested in more plot no. D 92 in the same project of the of the respondent i.e. Ramprastha City at Sector 92, 93 and 95 Gurugram for which the complainant's wife filed a separate complaint no. 182/2018 which is also pending adjudication before the hon'ble regulatory authority. The complainant being an investor invested in two residential units in the same project of the respondent for earning profits and the transaction therefore is relatable to commercial purpose and thus the complainant not being a "consumer" within the meaning of section 2(1) (d).
18. The respondent submits that despite several adversities, the respondent has continued with the development of the said project and is in the process of completing the development of the project and should be able to apply the OC/ part CC by 31.12.2025. Thus, the complainant is only a speculative investor and not interested in taking over the possession of the said plot.
19. The respondent submits that the rights and liabilities are to be governed by the plot buyer's agreement dated 29.09.2015



executed much prior to coming into force of the Act or said rules. Thus the authority has no jurisdiction to entertain the present complaint as there is no agreement executed between the parties in terms of the said Act and said rules.

20. The respondent submits that from the date of booking till the filing of present complaint i.e. for around six years, the complainant had never ever raised any issue whatsoever and on the contrary the complainant kept on making the payment of instalments, clearly that the complainant had no issue or concern about the plot and terms and conditions of the said plot buyer's agreement and is now unnecessarily raising false and frivolous issues and has filed the present complaint.

21. The respondent submits that the projects forms part and parcel of the single license bearing no. 33 of 2008. All the facilities are common for all the said projects which has already been developed by the company. The respondent has majorly developed infrastructure facilities for the entire 60 acres comprising of below projects. The respondent has completed major projects mentioned below and has been able to provide occupancy to the allottee.

22. The respondent submits that the payment made on 17.08.2012 was against the complainant's request for tentative registration of a 500 square yards plot in a future



potential project i.e. Ramprastha City at Sector 92, 93 and 95 and not at Sector 37D as alleged by the complainant.

23. The respondent submits that it was the complainant who had approached the respondent for investing in two plots and it was only after fully satisfying himself about the interest and entitlement of the respondent in the said project and having acquired full information the complainant had opted for booking of two plots in the said project.
24. The respondent submits that the complaint is pre mature as the time proposed of 36 months has still not expired and the complaint is liable to be dismissed on this ground alone. Thus, the complainant is neither entitled to raise the issue of delay in handing over of possession and take advantage of his own wrongs.

ISSUES RAISED BY THE RESPONDENT

- Whether the Hon'ble Authority has the jurisdiction to entertain the present complaint?
- Whether the complaint is pre mature and is liable to be dismissed on this ground alone?
- Whether the complaint is liable to make the balance payment of instalments, interest, etc. u/s 19(6) and 19(7) of the said Act?



- Whether the respondent is entitled to cancel the booking of the complainant and forfeit the earnest money if the complainant fails to make the balance payment of instalments, interest, etc. u/s 19(6) and 19(7) of the said Act?

DETERMINATION OF ISSUES

- In regard to the first issue raised by the complainant, as per page 16 of the respondent's reply and the receipts annexed, it is found that nowhere it is mentioned that the complainant was allotted any plot in Sector 37D. the only fact that is mentioned is that, plot measuring 500 sq. yards had to be allotted in future residential projects. Thus, the complainant is not bound to ask for allotment in Sector 37D.
 - In regard to the second issue raised by the complainant, the respondent is liable to provide the updates regarding the project which is an obligation of the promoter and is an entitlement on the part of the complainant to be provided with the details of the project.
25. The complainant makes a submission before the authority u/s 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above:

34 Functions of authority

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agent under this Act and the rules and regulations made thereunder



26. 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.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

27. 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:

28. The respondent is directed to submit a copy of demarcation plan to the authority as provided u/s 11(3) (a) which is reproduced as below:

(3) The promoter at the time of booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely: -

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the authority.

29. The respondent is directed to pay interest u/s 18 (1) at the prescribed rate for every month of delay if the respondent is



unable to handover the possession of the said residential plot on the due date of possession i.e. 29.09.2018 which has not lapsed yet. Section 18(1) proviso is reproduced below:

18 Return of amount and compensation

..... 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.

30. Keeping in view the unreasonable date of completion of project, the promoters have renewed the date of completion of project and now the revised date of completion is 31.12.2020. The letter of allotment on page 13 of the paper book, does not clearly indicate the date of the issue. The agreement between the parties was executed on 29.09.2015. As per clause 11(a) r/w clause 11(d) of the agreement, the possession was to be handed over within a period of 30 months plus 6 months as grace period. As far as delay in handing over of 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), the promoter is liable to pay interest for every month of delay at the 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 the authority and the respondent shall be liable to face penal consequences under the Act.

31. Order is pronounced.
32. File is to be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman
29.08.2018

Haryana Real Estate Regulatory Authority, Gurugram

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 29.08.2018
Complaint No.	183/2018 case titled as Mr. Manoj Gaur V/S M/S Ramprastha Promoters & Developers Pvt. Ltd.
Complainant	Mr. Manoj 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

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. 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