

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 29.08.2018
Complaint No.	195/2018 case titled as Mr. Hari Kishan Goenka Vs M/S Ramprastha Devlopers & Promoters Pvt. Ltd.
Complainant	Mr. Hari Kishan Goenka
Represented through	Shri Sukhbir Yadav, Advocate for the complainant
Respondent	M/S Ramprastha Devlopers & Promoters Pvt. Ltd.
Respondent Represented through	Shri Shobhit Maheshwari authorized representative with Shri Dheeraj Kapoor, Advocate
Last date of hearing	21.8.2018

Proceedings

The project is not registered and a show cause notice has already been issued to the respondent.

As there was no Builder Buyer Agreement in this case because as alleged by the complainant, BBA draft was not sent by them. Keeping in view the principle of natural justice, it was asked from the respondent as what is the due date of possession, in similar situated apartment where BBA have been executed. Counsel for the respondent informed that the due date of possession in similar situated apartment on the basis of executed BBA is

September 2015 + grace period of 120 days which comes out to be 31.1.2016.

The project is registered under RERA and the revised date of completion has been indicated by the promoters as 30.06.2019. Keeping in view the delay possession and the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act 2016, the allottee is entitled for interest at the prescribed rate for every month of delay from 1.2.2016 to be paid by the promoters before 10th of subsequent month or any other arrangement agreed between the parties. The interest due till end of this month be paid within 90 days from today. Accordingly, the matter is disposed of. 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

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

Complaint No. : 195 of 2018
First date of Hearing : 29.05.2018
Date of Decision : 29.08.2018

Hari Kishan Goenka & sons HUF
R/o House no. 394, Bhera
Enclave, Paschim Vihar,
Delhi-110087

...Complainant

Versus

M/s Ramprastha Promoter & developers
Pvt. Ltd.
Plot no. 11, Sector-44, Gurugram, Haryana-
122002

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Shobhit Maheshwari
Shri Dheeraj Kapoor

Advocate for the complainant
Authorized representative
Advocate for the respondent



ORDER

1. A complaint dated 24.04.2018 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 Hari Kishan Goenka & sons HUF against the promoter M/s Ramprastha Promoter & developers Pvt. Ltd. on account of violation of the builder-buyer agreement executed for unit no. 1701, 17th floor in the project "RISE", sector-37 D, Gurugram 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	"RISE" Sector-37 D Gurugram
2.	Registered/ unregistered	Registered
3.	Unit no.	1701,17 th Floor, Tower A
4.	Total cost	Rs. 84,85,125/-
5.	Total amount paid by the complainant	Rs. 79,32,226/-
6.	Percentage of consideration amount	93% Approx.
7.	Date of delivery of possession.	As stated by the counsel of respondent during hearing on 31.01.2016
8.	Delay of possession	2 years 7 months
9.	Cause of delay in delivery of possession	Due to force majeure



3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement was not executed between the parties, however, as per executed BBA of another flat in the same tower, the possession of the

aforesaid unit was to be delivered by 31.01.2016. The promoter has failed to deliver the possession of the said unit to the complainants by the due date 31.01.2016. 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. Accordingly, the respondent appeared on 29.05.2018. The case came up for hearing on 29.05.2018, 11.07.2018, 21.08.2018, 29.08.2018. The reply has been filed on behalf of the respondent on dated 13.06.2018.

FACTS OF COMPLAINT

5. The complainant is a 63 years old, senior citizen and karta of "Hari Kishan Goenka & Sons HUF". He along with his family members visited the Gurgaon office and Project site of respondent. The location was excellent and they consulted the local representative of the developer.
6. The complainants submitted that the complainants had booked to flat in above said project, bearing no. 1701 on 17 floor of tower no.-A, area admeasuring 1825 Sq. ft. in the project i.e. Rise, sector- 37 D, Gurugram, developed by the



respondent party, for sale consideration of Rs. 84,85,125/- with one covered car parking.

7. The complainant submitted that complainants continued to pay the remaining instalment as per the payment schedule and have already paid the more than 95% amount i.e. Rs. 79,32,226/- along with interest and other charges of actual purchase price till date 25.06.2015. In spite of complainants paid more than 95% of the actual amounts of money and was ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of flat on promised time. The respondent party had called 95% till 25.06.2015, and same was made by complainant and thereafter till date, possession of flat has not been given to complainant.
8. The Complainant submitted that he had purchased the flat with intention that after purchase, he would be able to stay in a better environment. Also it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat would be handed over to the complainant as soon as construction completes i.e. thirty six (36) months as per application form and assurance given by respondent.



9. The complainant stated that the he has also served emails and letters to the respondent at their office address and personally requested to executive bearer of respondent, before filing this complaint.
10. The complainant submitted that for the first time cause of action for the present complaint arose in or around 2015 when the respondent failed to handover the possession of the flat as per the term no.13 of application form. Further the cause of action again arose on various occasions, including on: a) Jan. 2016; b) March, 2016 c) May, 2016, d) July, 2016 e) November, 2016; f) April 2018, and on many time till date, when the protests were lodged with the respondent about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

11. ISSUES RAISED BY THE COMPLAINANT

- i. Whether the developer has violated the terms and conditions of application form ?
- ii. Whether there is any reasonable justification for delay to give possession of flat?



- iii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developer for delay in giving possession?
- iv. Whether complainant(s) are entitled for refund of all money paid to respondent?
- v. Whether complainant(s) are entitled for compounding interest @ 18% per annum from date of booking /April, 2012 to till the date?
- vi. Whether complainant(s) are entitled for compensation for mental agony and harassment? If yes, what amount?
- vii. Whether complainant(s) are entitled for compensation as penalty for delayed possession? If yes, what amount?
- viii. Whether complainant(s) are entitled for any other relief?

12. Relief sought

Pass an appropriate award directing the respondent to refund the paid amount i.e. Rs. 79,32,226/- with interest @ 18 % from April ,2012 to date of refund on paid amount by the complainant to the respondent party.



REPLY

The respondent submitted various preliminary objections and submissions. They are as follow:

13. That the respondent submits that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for the rejection of the complaint on the ground of the jurisdiction and this reply is without prejudice to the rights and contention of the respondent contained in the said application.
14. That the complainant for compensation & interest under section 12,14, 18 & 19 of the act is maintainable only before the adjudicating officer under rule-29 of the HRERA r/w section 31 & section 71, rule-28 & rule-29.
15. That the respondent submitted that the complaint is not supported by any proper affidavit with a proper verification.
16. That the respondent submitted that RERA has been enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA has not been enacted to protect the interest of investors. The complainant is an investor and not a consumer.
17. The respondent submitted that the complainant has been a defaulter, and deliberately fails to make payments of instalments within time, which results in delayed payment charges as reflected in statement of accounts. The current



outstanding amount towards delay payment charges is Rs. 1,05,076/- as of 05.11.2014 and cheque dated 05.11.2014 for an amount of Rs. 3,63,203/- issued by the complainant towards the payment of instalment, was also dishonoured due to insufficiency of funds.

18. The respondent submitted the respondent has continued with the construction of the project and is in the process of completing the construction of the project and should be able to apply the of OC for the apartment in question by 30.06.2019.
19. The respondent submitted that Mr. Hari Kishan Goenka was booked a HUF i.e. "Hari Kishan & Sons (HUF)" and therefore the complaint, can only be filed by the said HUF,(through its Karta), and only the said HUF can be the complainant. It is pertinent to mention that Mr. Hari Kishan Goenka, who claims himself to be the karta of the said HUF, has failed to place any document on record.
20. The respondent denied that the complainant has paid all the instalments till date as per the payment plan or upto 95% or the same were paid within the time prescribed.
21. The respondent submitted that the complainant, instead of making payment of requisite charges, sent emails and letters



on false and frivolous grounds, which were duly addressed by the respondent and the complainant was asked to execute the apartment buyer agreement and make the payment of his dues immediately. However, the complainant has neither executed the agreement nor cleared his dues till date.

22. Determination of issues

- i. Regarding the **first issue**, the developer has failed to deliver the possession on the due date i.e. 31.01.2016, which is a violation of the application form.
- ii. Regarding the **second issue**, despite several hurdles in giving possession, the respondent has failed to furnish a reasonable justification for the delay in handing over the possession.
- iii. Regarding the **third issue**, the complainants have not furnished any particulars to establish any misrepresentation on the part of developer.
- iv. Regarding the **fourth issue**, the authority is of view that the project is RERA registered & the revised date of completion has been indicated by the promoters as 30.06.2019. Keeping in view the completion of the project & interest of the other allottees, refund cannot be allowed at this stage.



- v. Regarding **fifth issue**, the allottee is entitled for interest at the prescribed rate at the rate of 10.45 % for every month of delay from 01.02.2016 till the handing over the possession in the manner provided in subsequent paras.
- vi. Regarding **sixth & seventh issue**, in the hearing dated 11.07.2018, the complainant made a statement that he is not appearing before the authority for the compensation and in case he seeks compensation, he can approach the adjudicating officer for the same.
23. As the possession of the flat was to be delivered by 31.01.2016 as discussed earlier, the authority is of the view that the promoter has violated 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."

24. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

"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."

It has been 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.



25. As per obligations on the promoter under section 18(1) proviso, in case the allottee wishes to withdraw from the

project, the promoter is obligated to refund the amount paid by the complainant along with interest at the prescribed rate as the promoter has not fulfilled his obligation. 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 reserve his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



26. Findings of the authority

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. The refund of

deposited amount will also have adverse effect on the other allottees. 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.

27. 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.

27. Decision and directions of the authority

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 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. 30.06.2019.
- (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 from the due date of possession i.e. 01.02.2016 till 29.08.2018 within 90 days of this order and



thereafter, on 10th of every month of delay till the handing over of possession.

(iii) If the possession is not given on the date committed by the respondent in the registration application 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*.

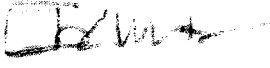
28. The complaint is disposed of accordingly.

29. The order is pronounced.

30. 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



Dated 29.08.2018