

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

Complaint no. : 3554 of 2019
First date of hearing: 05.12.2019
Date of decision : 20.02.2020

Shri Sachin Kumar
R/o: - Flat No. A-406, Ashoka Apartments,
Plot No. 36/2, Sector-9, Rohini,
New Delhi-110085

Complainant

Versus

M/s Ramprastha Promoters & Developers
Private Limited
Regd. Office: - Plot No. 114, Sector 44,
Gurugram-122002

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

None

Shri Dheeraj Kapoor
Ms. Rashmeet Virk

For the Complainant

Advocate for the Respondent

AR of respondent company

ORDER

1. The present complaint dated 13.08.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the Agreement to Sell executed inter-se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form: -

S.No	Heads	
1.	Project Name and location of the project	"Ramprastha City", Sector 92, 93 & 95, Gurugram
2.	Project Area	128.594 Acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	44 of 2010 Dated 09.06.2010 valid up to 08.06.2016
5.	Name of licensee	Ramprastha Housing Private Limited and 25 others
6.	RERA Registered/not registered	Not registered
7.	RERA registration valid Upto	N/A
8.	Unit no.	D225, Block-D



		(Page no. 17 of complaint)
9.	Unit measuring	300 sq. yds. (Page no. 17 of complaint)
10.	Date of execution of Apartment Buyer Agreement	20.12.2013 (Page no. 14 of complaint)
11.	Payment plan	Possession Linked Plan As per page no. 29 of complaint
12.	Total sale consideration	₹ 35,10,000/- (Page no. 29 of complaint)
13.	Amount paid by the allottee	₹ 29,28,000/- (Page no. 52 of reply)
14.	Due date of delivery of possession as per clause 11(a) and 11(d) of Buyer's Agreement -(30 months + Grace Period of 6 months subject to timely payment by the applicant)	20.12.2016
15.	Offer of possession	Possession has not been offered so far

16.	Specific relief sought	To direct the respondent to pay delayed possession charges at prescribed rate of interest per annum for delayed period in handing over the possession of the subject apartment.
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3. As per clause 11(a) and 11(d) of the Buyer's Agreement the possession was to be handed over by 20.06.2016, plus a grace period of 6 months from the date of Buyer's Agreement, which comes out to be 20.12.2016 Clause 11(a) and 11(d) of the Buyer's Agreement is reproduced herein below:

"11. Schedule of 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.*
- (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 thirty(30) months from the date of execution of this agreement then after the expiry of grace period of 6 months from the said 30(thirty)months subject to the Intending Allottee(s) having made all payments as per the Payment Plan and subject to the terms,*"




4. As per the facts mentioned aforesaid, it is crystal clear that as per clause 11(a) and 11(d) of the Buyer's Agreement the unit no. D-225, Block-D had to be handed over to the allottee by 20.06.2016 which is 30 months from the date of execution of Buyer's Agreement, and a further period of 6 months for unforeseen circumstances was provided in the agreement accordingly the delayed possession charges comes out to be 20.12.2016. Whereas the builder has miserably failed in completing the project and handing over the unit to the home buyer for which the complainant has paid an amount of ₹29,28,000/- against the total sale consideration of ₹35,10,000/- Since the builder has failed miserably in fulfilling its obligation as per the provisions of section 18(1) of RERA Act the buyer can either seek refund or possession at prescribed rate of interest till the actual handing over of possession. In the present case the buyer is seeking delayed possession charges.
5. The respondent has submitted in the reply that the delay caused was for the reason beyond their control and as stated in the reply.
6. Arguments of both sides were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time as per clause 11(a) and 11(d) of the Buyer's Agreement.
7. The Authority is of the considered view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant. As per the terms and

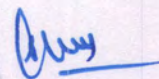


conditions of Buyer's Agreement executed between the parties and as such, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.20% per annum on the amount deposited by the buyer with the respondent from the due date of possession till offer of physical possession.

8. By virtue of clause 11(a) and 11(d) of Buyer's Agreement executed between the parties on 20.12.2013, possession of the booked unit was to be delivered by 20.06.2016 along with a grace period of 6 months from the date of Buyer's Agreement, which comes out to be 20.12.2016. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Buyer's Agreement dated 20.12.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest i.e. 10.20% p.a. w.e.f. 21.12.2016 till the offer of actual physical possession of the booked unit as per the proviso to section 18(1) of the Act read with rules 15 of the Rules.
9. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act: -
 - i. The respondent is directed to pay interest accrued so far at the prescribed rate of 10.20% p.a. for delay in handing over the possession from the due date of possession i.e.

- 21.12.2016 till the date of this order within 90 days from the date of decision and subsequent interest to be paid by the 10th of each subsequent month, till the offer of actual physical possession after receipt of occupation certificate.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything which is not part of the agreement.
 - iv. Complaint stands disposed of.
 - v. File be consigned to registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.02.2020

Judgement uploaded on 13.05.2020.

HARERA
GURUGRAM