

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

**Complaint no. :** 294 of 2019  
**First date of hearing:** 29.05.2019  
**Date of decision :** 20.02.2020

Smt. Geeta  
**R/o:-** H. No. 182/4,  
Marla Model Town, Gurugram

**Complainant**

**Versus**

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

**Respondent**

**CORAM**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Sanjeev Sharma  
Shri Dheeraj Kapoor  
Ms. Rashmeet Virk

Advocate for the Complainant  
Advocate for the Respondent  
AR of respondent company

**ORDER**

1. The present complaint dated 29.01.2019 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	"Rise", Sector 37D, Gurugram
2.	Project Area	60.5112 Acres
3.	Nature of the project	Group Housing Complex
4.	DTCP license no. and validity status	33 of 2008 Dated 19.02.2008 valid up to 18.02.2020
5.	Name of licensee	Ramprashtha Builders Private Limited & 13 Ors.
6.	RERA Registered/not registered	<b>Registered vide no. 278 of 2017 dated 09.10.2017(Tower A to G, N and O)</b>
7.	RERA registration valid Upto	30.06.2019
8.	Unit no.	903, 9 <sup>th</sup> Floor, Tower-B
9.	Unit measuring	1765 sq. ft.



10.	Date of execution of Apartment Buyer Agreement	01.09.2014 <b>Note: A new agreement has been executed between both the parties on 01.09.2014 as the complainant had misplaced the initial agreement dated 13/12/2012 as submitted by the respondent in the reply.</b>
11.	Payment plan	Construction Linked Payment Plan (Page no. 33 of complaint)
12.	Total sale consideration	₹ 82,42,680/- (as per schedule of payment annexed on Annexure II on pg. 33 of the complaint and pg. 72 of the reply)
13.	Amount paid by the allottee	₹ 67,48,977/- (as per payments schedule annexed on pg. 77 of the reply)



14.	Due date of delivery of possession as per clause 15(a) of Apartment Buyer's Agreement -by September 2015 along with a grace period of 120 days	31.01.2016
15.	Offer of possession	possession has not been handed over so far
17.	Specific relief sought	<p>i. To direct the respondent to immediately deliver the possession.</p> <p>ii. Direct the respondent to make the conveyance deed in favour of the complainant.</p> <p>iii. Direct the respondent to pay interest for delayed possession.</p>

3. As per clause 15(a) of the Apartment Buyer's Agreement the possession was to be handed over by September 2015 along with a grace period of 120 days, which comes out to be



31.01.2016. Clause 15(a) of the Apartment Buyer's Agreement is reproduced herein below:

**"15. POSSESSION**

**(a) Time of handing over the Possession**

*Subject to terms of this Clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the DEVELOPERS, the DEVELOPERS propose to hand over the possession of the Apartment by September 2015. The Allottee agrees and understands that DEVELOPERS shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."*

4. As per the facts mentioned aforesaid, it is crystal clear that as per clause 15(a) of the Apartment Buyer's Agreement the unit no. 903, 9<sup>th</sup> Floor, Tower-B was to be handed over to allottee by September 2015 along with a grace period of 120 days for applying and obtaining the OC in respect of the Group Housing Complex, Accordingly the due date of possession comes out to be 31.01.2016. Whereas the builder has miserably failed in completing the project and handing over the possession to the home buyer for which he has paid an amount of ₹ 67,48,977/- against the total sale consideration of ₹ 82,42,680/-. Since, the builder has failed miserably in completing his obligation as per the provision 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.

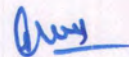
5. The respondent submitted in its reply that the delay was for the reasons beyond its control as stated in the reply.
6. Arguments of both sides were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time as per clause 15(a) of the Apartment 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 Apartment 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 15(a) of Apartment Buyer's Agreement executed between the parties on 01.09.2014, possession of the booked unit was to be delivered by September 2015 along with a grace period of 120 days, which comes out to be 31.01.2016. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Apartment Buyer's Agreement dated 01.09.2014 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 delayed possession charges at the prescribed rate of interest i.e. 10.20% p.a. w.e.f. 31.01.2016 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. 31.01.2016 till the offer of actual physical possession of the allotted unit after receipt of occupation certificate within 90 days from the date of decision and subsequent interest to be paid by the 10<sup>th</sup> of each subsequent month till the offer of actual physical possession.
- 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.