

PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.11.2018
Complaint No.	501/2018 case titled as Mr. Dheeraj Mehta Vs. M/s Ramprastha Promoters & Developers Pvt. Ltd. & anr.
Complainant	Mr. Dheeraj Mehta
Represented through	Complainant in person with Ms. Preeti Taneja, Advocate.
Respondent	M/s Ramprastha Promoters & Developers Pvt. Ltd. & anr.
Respondent Represented through	Shri Shobhit Maheshwari, authorized representative with Shri Dheeraj Kapoor, Advocate
Last date of hearing	15.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Project is registered with the authority.

Revised due date of giving possession is March 2020. As per clause 15 (i) of BBA, committed date of delivery of possession is 25.2.2018. However, the builder has failed to deliver the unit to the complainant. Complainant is entitled for delayed possession charges as per prescribed rate of interest i.e. 10.75% per annum. Complainant/buyer has also shown his critical economic condition on account of which he is seeking refund. The

authority has considered the pros and cons of the matter before taking any rational decision. In these circumstances, the authority is of the view that respondent/builder may give him the prescribed rate of interest @ 10.75% as mentioned above. However, a liberty is given to the complainant/buyer to get his flat/unit cancelled by moving an application to the builder, who is at liberty to forfeit 10% of the earnest money and refund the balance amount to the complainant.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint No. : 501 of 2018
Date of Institution : 04.07.2018
Date of Decision : 16.11.2018

Dheeraj Mehta
R/o House no 1218,
Sector 4, Gurugram- 122001.

...Complainant

Versus

1. Ramprastha promoters and
developers Pvt. Ltd.
R/o C-10, Block market, Vasant Vihar,
New Delhi- 110057.
2. State Bank of India
through its assistant general manager
DLF City Court, Sikanderpur
RACPC, Gurugram

...Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant in person with Advocate for the complainant
Ms Preeti Taneja
Shri Shobit Maheshwari Advocate for the respondents



ORDER

1. A complaint dated 04.07.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation

and Development) Rules, 2017 by the complainant Mr Dheeraj Mehta against the promoter Ramprastha promoters and developers Pvt Ltd and another on account of violation of clause 15 of the apartment buyer agreement executed on 04.10.2013 for unit no. 104 in tower A in the project “PRIMERA” for not giving possession by 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	Ramprastha Primera, Sector 37-D, Gurugram.
2.	Registered/Not Registered	Registered
3.	Registration valid up to	March 2020
4.	DTCP license number	12 of 2009 Dated 21.05.2009
5.	Date of booking	28.09.2012
6.	Payment plan	Construction linked
7.	Date of agreement	04.10.2013
8.	Unit area	1695 sq. ft.
9.	Unit no.	104, tower A
10.	Total consideration	Rs 1,06,36,273/-
11.	Total amount paid by the complainant	Rs 86,25,554/-
12.	Date of approval of building plans	25.04.2013
13.	Date of delivery of possession As per clause 15(i) of apartment buyer's agreement (within 54 months+ grace period of 120 days	25.02.2018



	from the date of approval of building plans)	
14.	Penalty clause As per clause 17 of apartment buyers agreement	Rs 5 per sq. ft. per month of the super area till the date of actual possession.
15.	Delay of number of months/ years till date	8 months 22 days

3. As per the details provided above, they have been checked as per record available in the case file provided by the complainant and respondents. A builder buyer agreement is available on record for unit no 104, tower A according to which the possession of the aforesaid unit was to be delivered by 04.07.2018. The promoters have failed to deliver the possession of the said unit to the complainant. Therefore, the promoters have not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 06.09.2018. The reply has been filed by the respondents.



FACTS OF THE CASE

5. That the complainant had booked an apartment in the project “Primera” and is aggrieved against the respondent for violating the provision of the act.
6. That the respondents has not got the said project registered under HARERA as per the information available to the complainant, however the said project falls under “on going project” as given under rule 2(o) of the HARERA rules.
7. That the respondents had sold the said project under the name PRIMERA through its authorised agent named proptiger, as well as by inviting applications for allotment through their website www.ramprastha.com.
8. That being induced by various representations made by the respondents through its property agent about the said project being one of much awaited premium residential project having comprised of air conditioned 3 BHK apartments connected to Dwarka expressway with total approximate cost of one crore which was to be paid on construction linked basis and that the same would be ready for possession in next 4 years, the complainant applied for an apartment in the said project and towards that made huge payments.



9. That in pursuance to the above, the complainant had filed a booking request to book an apartment and subsequently made payments for the said booking.
10. That as per the apartment buyer agreement the possession of the said project was delivered within 54 months from the date of approval of building plans by the office of DGTCP.
11. That 54 months' timeline for possession as agreed in apartment buyer agreement had already lapsed and the respondents had miserably failed to even erect the basic covered brick structure of the project, so handing over of possession by the respondents is a distant dream for the buyers of the said project. Therefore the respondents are in a clear violation of the provisions of the act.
12. That despite the fact that the respondents had already charged close to 85% of the total cost of the project, the stage of construction of the said project is in a dismal stage. So far only some roof slabs have been erected that too without constructing its four walls. There is no likelihood that the said project will be completed and handed over to the buyers even in the distant future.
13. That in the year 2016, the complainant had fallen short of money and he had to get the home loan sanctioned at the



interest rate of 8.35% . Consequently the complainant and the respondents had entered into tripartite agreement on 21.07.2016 for disbursal of sanctioned loan.

14. That the complainant along with his family has been staying in rental accommodation and is paying rent. The complainant is under financial distress as he is paying monthly instalments to the respondent no 2. That despite incurring such huge expenses to get his own house, the complainant is not able to realise his dream of staying in his own house as the possession of the said apartment has not been handed over because of non-construction/ completion of the said project within timelines and the same amounts to deficiency in service and unfair trade practices.
15. That the complainant had directly paid to the respondents a sum of Rs 67,52,657 including TDS. The respondent no 2 had made a payment of Rs 18,72,897 directly to the bank account of the respondents towards the part payment of sale for the said apartment. The complainant had also paid a sum of Rs 4,97,093 as interest to the respondent no 2 against his home loan taken against the said apartment.
16. That as per clause 1 (c) of the said apartment buyer agreement, the respondents shall charge 18% interest on



delayed payments, therefore in above circumstances of not giving the possession of the said apartment at all, the respondents are liable to refund the aforesaid amount along with interest @24% per annum from the respective date of deposits of the amount till actual date of realization. The respondents are also liable to refund the interest of Rs 4,97,093 paid to the bank on home loan which got sanctioned by the complainant for payments towards sale consideration of the said apartment. The respondents are also responsible for refund of rent @ Rs 30,00,000 per annum.

ISSUES RAISED BY THE COMPLAINANT:

17. The following issues have been raised by the complainant:
- i. Whether or not the respondents have violated the term and conditions of the agreement and thereby failed to deliver the possession of the said unit by the due date?
 - ii. Whether or not the complainant is entitled to seek refund of the amount deposited towards the sale consideration of the flat along with interest, cost and damages?



RELIEF SOUGHT BY THE COMPLAINANT:

18. The following reliefs have been prayed for:

- i. That the respondents kindly be directed to pay the complainant a sum of Rs 67,52,657 along with interest @24% per annum from the date of payment of respective instalments till the date of actual realization.
- ii. That the respondents kindly be directed to pay the complainant a sum of Rs 4,97,093 which has been paid by the complainant to respondent no 2 towards the interest of the home loan and also direct the respondent no 1 to give interest @24% per annum on this amount of Rs 4,97,093 from the respective dates on which the amount with respondent no 2 till actual date of realisation.
- iii. That the respondents kindly be directed to pay the complainant an amount which shall stand paid towards loan instalments and interest payments on the running home load with respondent no 2, pending this application till the date of its final disposal.



- iv. That the respondent be directed to pay to the complainant according to the terms of law and the apartment buyer agreement.
- v. Any other relief which this hon'ble authority may deem fit to meet the ends of justice.

REPLY BY RESPONDENT

19. The respondents submitted that the complaint filed by the complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent no 1 has also separately filed an application for rejection of the complaint on the ground of jurisdiction and that the reply submitted by him is without prejudice to the rights and contentions of the respondent no 1.

20. The respondents also submitted that the complaint for compensation and interest under section 12,14,18 and section 19 of the Act is maintainable only before the adjudicating officer.

21. The respondents submitted that the present complaint pertains to alleged delay in delivery of possession for which the complainant has filed the present complaint under rule 28 of the said Rules and is seeking relief of refund, interest



and compensation u/s 18 of the said Act. Therefore, even though the project in question in which the complainant has booked an apartment, is covered under the definition of “ongoing projects” and the registration has already been applied on 10.08.2018 and the registration certificate is still awaited.

22. The respondents also submitted that the complainant has not supported his complaint by any proper affidavit with a proper verification. In the absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.
23. The respondents submitted that from the date of booking till date the complainant had never ever raised any issue whatsoever and has now concocted a false story and raised false and frivolous issues and have filed the present complaint on false, frivolous grounds. The conduct of the complainant clearly indicates that the complainant is a mere speculator having invested with a view to earn quick profit and due to slowdown in market conditions, the complainant has filed the present complaint on false grounds.
24. The respondents further submitted that they had continued with the construction of the project and the project is in



process of completion based on which the respondents should be able to apply for the occupation certificate for the apartment in question by march, 2020. However the complainant was only a short term investor and therefore was not interested in taking over the possession of the said apartment.

25. The complainant further submitted that this authority is derived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer agreement signed by the complainant/allotment offered to him.
26. The respondents submitted that no cause of action has ever accrued in favour of the complainant to file the present complaint before this authority. The complaint being without any cause of action is liable to be dismissed on this ground alone.
27. The respondents further submitted that the complainant kept on making payments as per the payment plan and that from the date of booking till date, clearly reveals that the complainant had no issue or concern about the said apartment and is now unnecessarily raising false and frivolous issues and has filed the present complaint.



DETERMINATION OF ISSUES

28. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings of the authority are as under:

- i. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 15(i) of buyer's agreement; the possession of the said apartment was to be handed over by 25.02.2018. The clause regarding the possession of the said unit is reproduced below:

“15 (i) Time of handing over the possession

...in default under any of the provisions of this agreement and compliance with all provisions, formalities, documentation, as prescribed by the developer, the developer shall endeavour to complete the construction of the said apartment within a period of 54 months from the date of approval of building plans by the office of DGTCP. The allottee agrees and understands that the developer shall be entitled to a grace period of 120 days, for applying and obtaining the occupation certificate ...”

Accordingly, the due date of possession was 04.07.2018 and the possession has been delayed by approximately 8 months 22 days till the date of filing of complaint. The delay compensation payable by the respondents as per clause 17 of the apartment buyers agreement @ Rs.5/- per sq. ft. per



month of the super area of the unit for the period of delay beyond 04.07.2018 which is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondents and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (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.”

Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondents have failed to deliver the possession of the unit number 104 in tower-A in the project ‘PRIMERA’, to the complainant by the committed date i.e. 25.02.2018 as per the said agreement and the possession has been delayed by approximately 8 months 22days till the date of decision. Thus, the complainant is entitled to interest at



prescribed rate for every month of delay till the handing over of the possession.

- ii. With respect to the **second issue**, it is difficult to ascertain the status of the project as no documentary proof has been provided on record. However, the respondents have submitted in their reply in para 2 of para-wise reply that they will be in a position to complete the project by March, 2020. Thus, the respondents are bound to deliver the possession by the said date.

FINDINGS OF AUTHORITY:

29. The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. 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.
30. The authority is of the view that the respondents have delayed the possession by 8 months 22 days and thus is



liable to hand over possession under section 11(4) (a) of the Act.

31. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoters to comply with the provisions and fulfil obligation.
32. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
33. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.
34. The complainant has also shown his critical economic condition on account of which he is seeking refund. The authority has given liberty to the complainant to get his flat/unit cancelled by moving an application to the builder.



DECISION AND DIRECTIONS OF THE AUTHORITY:

35. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondents are duty bound to hand over the possession of the said unit by 25.02.2018 as committed by the respondents.
- (ii) The respondents are directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 25.02.2018 till 16.11.2018 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 respondents then the complainant 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*.



(iv) If the complainant wishes to get his unit cancelled, then the builder is at liberty to forfeit 10% of the earnest money and refund the balance amount to the complainant.

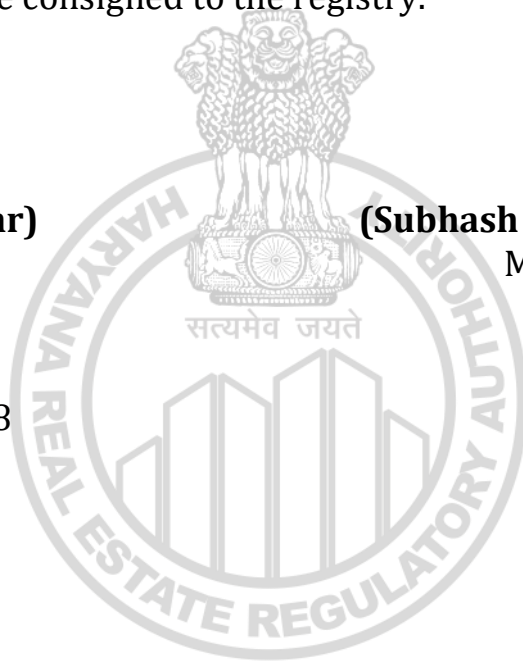
36. The order is pronounced.

37. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 16.11.2018



HARERA
GURUGRAM

