

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

Complaint No. : 346 of 2018
First date of hearing : 25.07.2018
Date of Decision : 29.10.2018

Mr. Subir Kumar Dutta,
R/o. H.No.- 3, Greyhound Court
Kendall Park, New Jersey -08824,
USA

Complainant

Versus

M/s Ramprastha Sare Realty Pvt. Ltd.
Regd. Office: E-7/12, LGF,
Malviya Nagar,
New Delhi - 110017

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Vaibhav Suri Ahluwalia Advocate for the complainant
Shri Manoj Kumar Advocate for the respondent

ORDER

1. A complaint dated 29.05.2018 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. Subir



Kumar Dutta, against the respondent, M/s Ramprastha Sare Realty Pvt. Ltd., on account of violation of the clause 3.3 of the Flat buyer's agreement executed on 15.11.2013 of unit no. G3-0201 in the project 'The Grand' at Crescent Parc, Sector-92, Gurugram with a super area of 2280 sq.ft. for not fulfilling the obligation to deliver the possession of the flat within a period of 40 month from date of commencement of construction with the grace period of 6 months, 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	"The Grand", crescent parc, Sector-92 Gurugram
2.	Flat/apartment/unit no.	G3-0201
3.	Flat measuring	2280 Sq. Ft.
4.	RERA Registered/ not registered.	Registered
5.	DTCP license	44 of 2009 68 of 2011
6.	Nature of real estate project	Residential
7.	Booking date	31.03.2013
8.	Date of execution of Flat buyer's agreement	15.11.2013
9.	Payment plan	Construction Linked Plan
10.	Basic Sale Price	Rs. 14,332,800/-
11.	Total amount paid by the complainant till date	Rs. 1,15,03,319/-
12.	Percentage of consideration amount	Not known
13.	Date of delivery of possession as per clause 3.3 of flat buyer's agreement Date of construction : 28.10.2013	28.08.2017 (including grace period)
14.	Delay of number of years / months/ days till date	28 months



15.	Penalty Clause as per clause 3.3 of the Flat Buyers Agreement	Rs.5/- per sq. ft. per month.
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3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A flat buyer's agreement dated is available on record for the aforesaid apartment neither the respondent has delivered the possession of the said unit till 28.08.2017 to the purchaser nor they have paid any compensation at the rate of Rs.5/- per sq. ft. per month as per clause 3.3 of the agreement. 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 appearance. The respondent appeared on 25.07.2018, 13/09/2018, 27/09/2018, 22/10/2018 and 29/10/2018. The case came up for hearing on 25.07.2018. The reply is filed by the respondent on 07.08.2018. The respondent has provided the details and status of the project along with the reply. The respondent has submitted an affidavit dated 07.08.2018 wherein the respondent has denied that the complainant has faced any harassment or he has suffered financial loss or the possession has not been given on time. The complainant has not filed any rejoinder as of now.



Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that on 31/03/2013, the complainant booked the flat of super area 2280 sq. ft in project “The Grand” situated at Crescent Parc, Sector 92, Gurgaon, Haryana. That the complainant and respondent on 15.11.2013, entered into a flat buyer’s agreement. It was represented by the respondent that the said project will be developed within the promised time frame and the possession of the flat shall be handed over to the complainant in the agreed time after completing the entire development and obtaining the completion certificate from the local authority. The respondent further conveyed that he will develop the project as represented in the advertisement as well as on internet.
6. That based on the representation of the respondent, the complainant was induced to sign pre-printed allotment letter dated 31.03.2013 and a flat buyers agreement dated 15.11.2013 by virtue of which the respondent allotted flat bearing no. G3-0201. The complainant has paid a total sum of Rs.1,15,03,319/- towards the aforesaid flat. The payment was made as and when demands were raised by the respondent company and complainant has never been defaulted. The



respondent made string of misrepresentation in relation to the aforesaid project and has now been taking shelter of one sided and unconscionable terms of the agreement. The respondent through its brochure represented that the project in question shall have a landscape garden running into an area of 25,000 sq. ft. including all facilities etc. the said promised facilities are no where to be seen and the project is nothing but concrete jungle. The project is not even near completion and respondent have charged extra EDC and IDC and levied various other illegal charges.

Issues raised by the complainants are as follow:

- i. Whether the respondent/promoter made false representation about the project in question in order to induce the complainant to make a booking?
- ii. Whether the respondent is liable for unjustifiable delay in construction and development of the project?
- iii. Whether the respondent has over charged the EDC and the IDC?
- iv. Whether the Respondent is liable to refund the amount deposited by the complainant along with interest @18% per annum along with compensation?



RELIEF SOUGHT:

- i. Direct respondent to refund a sum of Rs.1,51,37,625/- along with interest @ 18% per annum.
- ii. To direct respondent to pay a sum of Rs.25,00,000/- to the complainant towards compensation for making false and incorrect statements and for hardship and injury, both physical and mental.
- iii. To direct the respondent to pay a sum of Rs.50,000/- to the complainant towards the cost of the litigation

Respondent's reply

7. The respondent contends that the name of the company has been changed to SARE Gurugram Pvt. Ltd. the present reply is being filed by the above-named company. That the project i.e. the grand has been registered with the Haryana Real Estate Regulatory Authority bearing the Memo No. HRERA-159/2017/1303 dates 09.10.2017 with registration no. 262 of 2017 dated 03.10.2017 issued by the authority. The construction was started on 14/01/2013.
8. That the registration is valid for a period till 30.09.2019 and as per Section 5(3) of the Act, the registration granted under this section shall be valid for a period given by the promoter under sub section (c) of clause l of sub section (2) of section 4



of the Act for completion of the project. Therefore, the respondent has been allowed to complete the project by 30.09.2019. Therefore, the complaint is premature. For the reference:

Section 4 (2)(1)- (2)"... The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:— (1) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:— (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person; (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details; (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be; (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose....."

Section 5(3) – "....(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be..."



9. That the complainant made some late payments of the instalments and consequent to which interest has been charged. The complainant had paid an amount of Rs.

1,15,137,625/- and is still liable to pay an amount of Rs. 72,685 on account of interest for delay payment. The respondent sent reminders on 12.05.2014, 04.07.2014, 11.07.2014 and final reminder on 10.09.2014, a final reminder on 10.10.2014, a final reminder on 15.12.2014, a final reminder on 18.02.2015. The respondent further contends that no misrepresentation of any kind was made to complainant. The flat buyer's agreement was signed by the complainant out of his free own will. The respondent is a genuine real estate developer and denies that whatever construction had been done is of an inferior quality. The complainant is making false and frivolous allegations in order to wriggle out the terms and conditions of the flat buyer's agreement. All charges levied are in accordance to the terms and condition of the agreement mutually agreed by the parties.

DETERMINATION OF ISSUES

1. As per the complainant's issue I, the respondent has not been able to construct the tower/building/plot as per the advertisement in the brochure as well on internet, he showed rosy pictures of the project but till now has not been able to fulfil the same, hence, it may be said here that the respondent made a false representation about the project and also



induced the complainant to make a booking by showing facilities which have not been even made as of now.

2. Complainant's issue II, the construction had started on 28.10.2013 and as per the flat buyer's agreement clause 3.3 the respondent is supposed to give possession within 40 months from the commencement of the construction excluding 6 months grace period, but it has been more than 40 months since the construction of the project has been commenced and the respondent has failed to provide reasonable justification for such delay, therefore as sought in the relief (i) the respondent is liable to refund the some of Rs. 1,51,37,625/- along with interest @ 18% per annum (covered issue IV also).
3. As per the complainant's issue III the respondent has not overcharged for EDC/IDC.
4. Regarding the fourth issue, the respondent have failed to deliver the possession of the project to the complainant within the stipulated time of 46 months (including 6 months grace period) and hence, they are liable to refund the amount to complainant along with the 10.45% p.a. as an interest.



Findings of the authority

9. The respondent admits as the concerned project is situated in Sector -92 ,Gurugram and as the nature of the project is residential and it has complete territorial as well as subject matter jurisdiction.
10. Keeping in view the present status of project and intervening circumstances, the authority is of the considered opinion that the has registered its project under the RERA Act, 2016 with the registration certificate bearing memo no. HRERA-159/2017/1303 dated 09.10.2017 with registration number 262 of 2017 issued by the authority and hence, they have not violated section 3 of the Act ibid.

Decisions and Directions of the authority

11. 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 order in the interest of justice :

- i. The complainant is very much entitled for prescribed rate of interest @ 10.45% on the amount paid by the complainant w.e.f. 28.8.2017 on account of delay in handing over the possession. In case, the builder fails to deliver the possession as mentioned in the registration certificate i.e 30.09.2019, in that case, buyer shall be entitled to get back



the amount paid by him to the respondent alongwith prescribed rate of interest.

- ii. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession.

12. Order is pronounced.
13. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date:29.10.2018

HARERA
GURUGRAM

