

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	604/2018 case titled as Mr. Pawan Gahlawat Vs. M/s Ramprastha Promoters & Developers Pvt. Ltd.
Complainant	Mr. Pawan Gahlawat
Represented through	Shri Sushil Yadav, Advocate for the complainant.
Respondent	M/s Ramprastha Promoters & Developers Pvt. Ltd.
Respondent Represented through	Shri Shobhit Maheshwari authorized representative with Shri Dheeraj Kapoor, Advocate
Last date of hearing	23.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

As per clause 15 (a) of the Builder Buyer Agreement dated 15.11.2011, Flat No.B-404, Tower-B in project "SKYZ", Sector 37-D, Gurugram booked by the complainant, possession of which was to be delivered to the complainant on 31.1.2.2014. However, respondent has failed to deliver the possession of flat on the committed date of delivery. Project is registered with the authority and the revised date of delivery of possession is 31.3.2019. However, complainant/buyer is entitled for delayed possession

charges @ 10.75% per annum as per the provisions of section 18 (1) of the Act. Since the project is inordinate delayed for a period of 3 years and 10 months, as such, it is directed that respondent shall pay cumulative interest upto date within 90 days and thereafter subsequent payment of interest on the 10th of every month. If the builder fails to hand over the possession of the unit on the revised committed date, in that case, complainant is at liberty to seeks refund of the deposited amount.

Complaint is disposed of. 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. : 604 of 2018
First date of hearing: 24.07.2018
Date of Decision : 20.11.2018

Mr. Pawan Gahlawat
GH 9/135, Pachim vihar,
New Deldi-110063

Complainant

Versus

M/S Ramprastha Promoters & Developers pvt.
C-10 C Block market vasant vihar,
New Delhi-110057

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Pawan Gahlawat Complainant in person
Shri Dheeraj Kapoor Advocate for the complainant
Shri Shobhit Maheshwari Respondent represented through

ORDER

1. A complaint dated 24.07.2018 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. Pawan Gahlawat, against the promoter M/s Ramprastha Promoters And Developers pvt., on account of violation of the clause



15(a) of the apartment buyer's agreement executed on 15.11.2011 in respect of apartment number B-404, block/tower 'B' in the project 'SKYZ' for not handing over possession on the due date i.e. 31.08.2014 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	"SKYZ", Sector 37-D, Gurugram
2.	RERA registered/ not registered.	Registered
3.	Revised date of delivery of possession	31.03.2019
4.	Apartment/unit no.	B-404, block/tower 'B'
5.	Apartment measuring	1725 sq. ft.
6.	Date of execution of apartment buyer's agreement	15.11.2011
7.	Total sale consideration	Rs.53,62,875 /-
8.	Total amount paid by the complainant till date	Rs.49,31,725 /-
9.	Percentage of consideration amount	Approx. 88 percent
10.	Date of delivery of possession as per clause 15(a) + 120 days grace period	31.12.2014
11.	Delay in handing over possession till date	3 year 10 months
12.	Penalty clause as per apartment buyer's agreement dated 31.08.2014	Clause 17(a) of the agreement i.e. Rs. 5/- per sq. ft per month of the carpet area of the said flat.



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. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 31.08.2014. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 17(a) of apartment buyer's agreement dated 15.11.2011. 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 through his counsel appeared on 25.09.2018. The case came up for hearing on 23.10.2018. The reply filed on behalf of the respondent has been perused.



Facts of the complaint

5. Briefly stated, the facts of the case of the complainant are that the respondent gave advertisement in various leading newspapers about their forthcoming project named

Ramprastha "SKYZ" in Sector 37-D, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Mr. Pawan Gahlawat, booked an apartment/flat admeasuring 1725 sq.ft. i.e in aforesaid project of the respondent for total sale consideration of **Rs 7014525/-** which includes BSP, car parking, IFMS, Club Membership, PLC etc.

6. The complainant made payment of **Rs 5500781/-** to the respondent vide different cheques on different dates, the details of which are as Annexed.
7. That as per flat buyer agreement the respondent had allotted a unit/flat bearing no B-404 in tower-B having super area of 1725 sq. ft. to the complainant. That as per paragraph no.15(a) of the builder buyer agreement, the respondent had agreed to deliver the possession of the flat latest by 31.08.2014 as per the date of signing of the flat buyer agreement dated 15.11.2011 with an extended period of 120 days.



8. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving 85-90% approximately payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.
9. That it could be seen that the construction of the block in which the complainant's flat was booked with a promise by the respondent to deliver the flat by 31.08.2014 but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
10. That due to this omission on the part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time. That as



per clause 17 (a) of the flat buyer agreement dated 15.11.2011 it was agreed by the respondent that in case of any delay, the respondent shall pay the complainant a compensation @ Rs.5/- per sq.ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at such nominal rate of Rs.5/- per sq.ft per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay of almost 47 months. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.5/- per sq.ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @1% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.



11. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting

the office of the respondent either to deliver possession of the flat in question or to refund the amount along with interest @ 18% per annum on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

12. That the complainant booked the aforesaid flat through authorised broker i.e PS Finmart Pvt Ltd of the respondent and he assured the complainant to refund the amount of Rs 124200/- after payment of 35% of the sale consideration to the respondent and now after the complainant deposited the amount ,the authorised broker also is not traceable and respondent are not taking any responsibility of the same.

13. The complainant has taken loan amounting Rs.3279395 /- from HDFC Bank for which he is emitting EMI 26600 INR /month, total interest paid to bank is 1,696,494 INR till May 2018. The complainant visited the site but is shocked to see that no construction was going on and complainant is paying



so much amount to the bank on account of EMI of loan availed by the complainant.

14. Issues raised by the complainants are as follow:

- i. That flat has not been handed over to the petitioner till today and there is no reasonable justification for the delay.
- ii. The interest cost being demanded by the respondent / developer is very higher i.e.18% which is unjustified and not reasonable,

Relief sought:

The complainant is seeking the following relief:

- (i) Direct the respondents to refund the amount of **Rs. 5500781** /- + Rs. 1,696,484(Bank interest) along with interest @ 18% per annum on compounded rate from the date of booking of the flat in question ;
- (ii) Any other, further or alternative relief for which the complainant herein may be found entitled for be also granted in favour of the complainants and against the respondent in accordance with law.



Respondent's reply

15. The respondent submitted that the complaint filed by the complainant is not maintainable and this hon'ble authority has no territorial jurisdiction to try the present complaint. That the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder.
16. The respondent submitted that the complainant pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint under rule-25 of the said rules and seeking relief u/s 18 of RERA Act . The respondent project is covered under within the definition of **"Ongoing Project"** as on 31.07.2017 i.e. the period of three months from the commencement of Act 2016. **"Ongoing Project"** has been defined under Rule 2 (o) HARERA Rules as under :



(o) "on going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May,2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules.

17. The respondent further submitted that, the above stated position is further vindicated by the proviso to section 71 which clearly states that even in a case where a complaint is withdrawn from a consumer forum for purpose of filing complaint under the said act and said rules, the application, if any can only be filed before adjudicating officer and not before regulatory authority.

18. The respondent submitted that from the date of booking till the filing of the present complaint has never raised any issues whatsoever and has now concocted a false story to cover up his own defaults of non -payments of dues within the time prescribed and raised false, frivolous and concocted grounds. This conduct clearly indicates that the complainant is a mere speculator who had invested with a view to earn



quick profit, however he was unable to do so due to slowdown in the market conditions, further the complainant has failed to perform his contractual obligation of making timely payments.

19. The respondent submitted that it is wrong and denied that the respondent gave any advertisement or made any promise or gave any undertaking, as, alleged, or that relying on it, the complainant booked the apartment or that the respondent agreed to deliver the possession by 31.08.2014 with extended period of 120 days.

20. The respondent submitted that complainant having deliberately failed to make payments of various installments within the prescribed period, which result in outstanding dues of Rs.5,69,058/- and delay payment charges are of Rs.5,06,909/-therefore, there is no issue of delay in delivery possession. The project would be completed by 31.03.2019 that is i.e (31.08.2014 + 120days + 6 months+ 4 months)

21. The respondent submitted that, respondent has continued with the construction of the project and the project is in the process of completion and should be able to apply the



occupation certificate for the apartment in question by 31.03.2019.

22. The respondent submitted that the respondent has throughout conducted the business in a bona fide manner and the delay occasioned had been beyond the control of the respondent. Due to multifarious reasons and given the agreed terms between the parties the complainant have no cause of action but to file the present complaint as the delay occasioned is very much due to the factors so contemplated.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

23. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 15(a) of apartment buyer's agreement, the possession of the flat was to be handed over by 31.12.2014. The clause regarding the possession of the said unit is reproduced below:



“15(a) offer of possession

...the Developer proposes to handover the possession of the said flat till 31.08.2014 with grace period of 120days, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities....”

24. Accordingly, the due date of possession was 31.12.2014 and the possession has been delayed by three year and ten months till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said apartment as per clause 17(a) of apartment buyer's agreement is held to be very nominal and unjust.

25. With respect of **second issue** the terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also observed in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (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.”

.....18(a)

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.....

.....15

The rate of interest payable by the promoter, as the case may be, shall be the state bank of India highest marginal cost of lending rate plus two percent.....

26. As the possession of the flat was to be delivered by 31.08.2014 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the 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."

27. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.

The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation 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.



The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

28. The preliminary objections raised by the respondent 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.

Decision and directions of the authority

29. 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. As per clause 15 (a) of the builder buyer agreement dated 15.11.2011, Flat No.B-404, tower-B in project "SKYZ", Sector 37-D, Gurugram booked by the complainant, possession of which was to be delivered to the complainant on 31.1.2.2014. However, respondent has failed to deliver the possession of flat on the committed date of delivery.
- ii. Project is registered with the authority and the revised date of delivery of possession is 31.3.2019. However, complainant/buyer is entitled for delayed possession charges @ 10.75% per annum as per the provisions of section 18 (1) of the Act. Since the project is inordinate delayed for a period of 3 years and 10 months, as such, it is directed that respondent shall pay cumulative interest upto date within 90 days and thereafter subsequent payment of interest on the 10th of every month. If the builder fails to hand over the possession of the unit on the



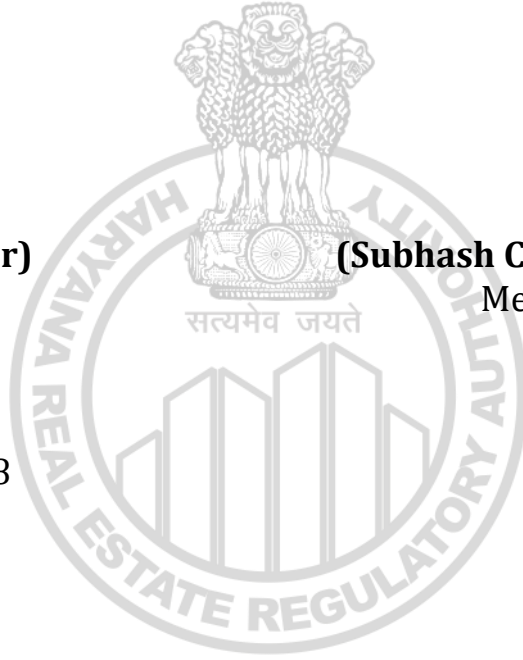
revised committed date, in that case, complainant is
at liberty to seeks refund of the deposited amount

30. Complaint is disposed off.
31. The order is pronounced.
32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 20.11.2018



HARERA
GURUGRAM

