

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

Complaint No. : 164 of 2018
First date of Hearing : 16.05.2018
Date of decision : 20.11.2018

Vikas Sareen
R/o D7, 1001, Tulip Petals, Pataudi
Road, sector 89, Gurugram, Haryana

...Complainant

Versus

Ramprastha Promoters and
Developers Private Limited
Regd office: Plot no. 114, sector
44, Gurugram, Haryana-122002

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Vikas Sareen Complainant in person
Shri Shobhit Maheshwari Authorized representative on
behalf of the respondent
Shri Dheeraj Kapoor Advocate for respondent



ORDER

1. A complaint dated 17.04.2018 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 Vikas Sareen, against the promoter M/s Ramprastha Promoters and Developers Private Limited on account of violation of clause 15(a) of the apartment buyer's agreement dated 22.10.2012 executed for apartment no. B 1301, block B, 13th floor with a super area of 1185 sq. ft. in the project "The Atrium", Ramprastha City, Sector 37D, Gurugram, Haryana.

2. The particulars of the complaint are as under:

1.	Name and location of the project	"The Atrium" Sector 37D, Gurugram
2.	Apartment no.	B 1301, B block, 13 th floor
3.	Nature of real estate project	Group housing colony
4.	Project area	60.5112 acres
5.	Registered/ unregistered	Not registered
6.	DTCP license no.	33 of 2008
7.	Date of application of allotment	23.09.2012
8.	Date of apartment buyer 's agreement	22.10.2012
9.	Total consideration	Rs. 67,60,345/-
10.	Total amount paid by the complainant	Rs 53,45,793/-
11.	Payment plan	Construction Linked Plan
12.	Due date of delivery of possession. (Clause 15 (a) states no specific date of possession, but it states the grace period of 120 days after the expiry of the due date of	



	possession which can't be ascertained)	
13.	Delay of number of months/ years up to 06.05.2018	Cannot be ascertained
14.	Penalty clause as per builder buyer's agreement dated 22.10.2018	Clause 17(a) i.e. Rs 5 per sq. ft. of the super area per month till the date of grant of possession as specified in clause 15(a)

3. The details provided above have been checked and found as per the case file available on record provided by complainant and respondent. As per apartment buyer agreement dated 22.10.2018 executed between the parties, the possession of the aforesaid unit was to be delivered by (date not mentioned in the agreement). Thus, the promoter has failed to fulfil his liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 16.05.2018. The case came up for hearing on 16.05.2018, 27.06.2018, 18.07.2018, 26.07.2018, 18.09.2018 and 21.09.2018. The reply has been filed by the respondent on 13.06.2018.



FACTS OF COMPLAINT

5. The complainant submitted that in August 2012, he visited the project site of the respondent company which is located in Ramprastha city, Sector 37D, Gurugram and observed various projects which comes under Ramprastha city like Atrium, Edge, View etc. at different stages of construction. One of the project which was launched in the year 2009 namely "The Atrium" was at advanced stage as the construction of the building structure was completed.
6. The complainant submitted that he went to the office of the respondent company to discuss the status of the concerned project and he was informed that the completion date of the project was August 2012 but the project is running behind the schedule of 6 months and is expected to be completed by March 2013.
7. The complainant submitted that considering the expected possession within six months of time, the complainant resolved to visit the respondent company's office to understand the details of the concerned project from the sales representatives of the company.



8. The complainant submitted that as the project completion date was almost within few months and the building structure work was completed so the company is now charging a higher price of the same flat which was sold around Rs 30,00,000/- just three years back in 2009.
9. The complainant submitted that considering the above facts, he decided to book a flat of 1185 sq. ft. and started arranging the booking amount (10% of project cost) and remaining amount to be paid within one month of the booking.
10. The complainant submitted that on 23.09.2012, he paid the booking amount of Rs 6,00,000/- vide cheque no. 339944 after filling out the application form for flat no. B1301 in the concerned project. At that time the complainant was informed that the agreement would be signed whenever the complainant visited the respondent again.
11. The complainant submitted that on 19.10.2012, he visited the office of the respondent company for making the part payment of Rs 16,80,000/- and signing of BBA but when the complainant read the BBA he realized that the terms and conditions of the agreement were unilateral and one sided.



12. The complainant submitted that due to the above stated terms and conditions of the BBA, the complainant refused to sign the said agreement and requested for the refund of the booking amount of Rs 6,00,000/- but the same was denied by the sales representative by mentioning the amount to be non-refundable, and the amount to be forfeited in case of cancellation of the flat booking by the complainant.
13. The complainant submitted that he was assured for the handing over of possession within six months from the date of booking thus he was left with no option but to sign the BBA and paid a part of the outstanding amount of Rs 16,80,000/- to the respondent company.
14. The complainant submitted that when he visited the site in January 2013, he was astonished to see that there was no progress since October 2012. The complainant further submitted that he was told that the construction work had to be slowed down because the Haryana government didn't allow extraction of water from the ground for the construction works, so there was a possible delay of 4 months and the



revised date given for possession was July 2013 instead of March 2013.

15. The complainant submitted that regarding the penalty clause, the respondent company stated that it would be imposed from the date of booking as there is no mention of the due date of possession in the agreement dated 22.10.2018. thus, penalty would be imposed from 23.09.2012.
16. The complainant submitted that after the lapse of 4.5 years, on 14.12.2017, the complainant received an email stating that the respondent company has received occupation certificate for the concerned project bearing no.ZP-418 / SD(BS) /2017 /32021 dated 13.12.2017.
17. The complainant submitted that when he visited the site on 23.12.2017 to verify the reasons of additional changes and to check the status of the said flat, it was found that some of the work was still pending in the project premises like construction of connecting road to the project site, sanitary fittings of the flat etc. The complainant was informed that this work would be completed just before the handing over of the possession and the same would be handed over within 2



months of making full and final payment, but no explanation was furnished for the increased super area of the flat and other charges due to additional staircase.

18. The complainant submitted that he was told by the respondent's sales representative that the company shall pay delay penalty for a period of 18 months only to the complainant, but the actual delay was about more than 60 months from the committed date of possession, thus the same has to be calculated and paid to the complainant.
19. The complainant submitted that on 15.01.2018, he was made to sign an indemnity bond like any other allottee and the same was confirmed by the sales representative. The complainant was further informed that without signing the indemnity bond no outstanding amount would be accepted which is to be paid by the complainant within 30 days starting from 08.01.2018.
20. The complainant submitted that he continued to sent email dated 05.02.2018 and 10.02.2018 to accept the full and complete payment as per the demand letter but the same remained unanswered till date.



21. The complainant lastly submitted that without any response from the respondent's side the complainant was left with no other option than to sign the indemnity bond and the compensation receipt as demanded by the builder and pay the outstanding amount of Rs 14,14,552/- to secure the already paid amount of Rs 53,45,793/- to the respondent company.

ISSUES RAISED BY THE COMPLAINANT

- i. Whether the respondent is liable to pay interest for the unjustifiable delay of 5 years caused to the complainant?
- ii. Whether the complainant is entitled to pay for the increased area of 55 sq. fts. to the respondent without providing any justification with respect to the above said demand?
- iii. Whether the respondent company is liable towards the complainant to enforce him to sign the indemnity bond in order to accept the final payment and for the commencing of construction works?



RELIEF SOUGHT

- i. Direct the respondent to pay the penalty @10% p.a. on the amount paid since October 2012 till the date of final payment i.e. Rs 33,59,793/-.
- ii. Direct the respondent to refund the amount of Rs 2,73,840/- charged against the increased super area of the flat i.e. 55 sq. ft.
- iii. Direct the respondent to refund the amount of Rs 54,000/- charged against the cost of additional staircase which would not have been charged otherwise.

RESPONDENT'S REPLY

22. The respondent admitted the fact that as the concerned project "The Atrium" is located in Sector 37D, Gurugram the authority has complete territorial jurisdiction to entertain the present complaint.
23. The respondent submitted that the said project is neither covered under the definition of rule 2(1)(o) of HARERA rules, 2017 nor it is registered with the authority, thus the authority has no jurisdiction to entertain the present complaint for want of jurisdiction. The above said point pertains to the fact that



the application for OC and CC was made to the authority prior to the publication of the rule i.e. on 27.04.2016 that is before 28.07.2017 and thus the authority lacks jurisdiction in the present complaint and the complaint is liable to be dismissed.

24. The respondent submitted that the authority lacks the jurisdiction to try the present complaint as even the actual OC has been granted on 13.12.2017 and the same has been attached as Annexure R2.

25. The respondent submitted that the present complaint pertains to compensation and interest u/s 12,14,18 and section 19 which is only maintainable before the adjudicating officer u/s 71 r/w rule 28 and not before the hon'ble authority for which a separate application needs to be filed before the adjudicating officer. Thus, the authority is out of the ambit of entertaining the present complaint.

26. The respondent submitted that the present complaint is not supported by any affidavit and in the absence of proper attestation the complaint is liable to be dismissed.



27. The respondent submitted that RERA Act, 2016 was enacted to protect the interests of the consumers and not the investors. The complainant in the present complaint is an investor and not a consumer u/s 2(d) of Consumer Protection Act, 1986. The fact is supported by the point that is the complainant in the present case who is already the owner and resident of 19/22B, 2nd floor, Tilak Nagar, New Delhi is a mere investor, who never had any intention to buy the apartment for his personal use and kept on avoiding the performance of his contractual obligations of making timely payments and now has filed the present complaint on false and frivolous grounds. The complainant has invested in the apartment for earning profits and is solely relatable to commercial purpose, thus the complaint is liable to be rejected.

28. The respondent submitted that the occupation certificate that was to be granted on 26.06.2016 was actually granted on 13.12.2017. However, even after the possession was offered it was only after various requests and reminders including the email dated 05.02.2018 that the complainant made the payment of Rs 15,58,551/-.



29. The respondent submitted that the possession has already been offered on 06.05.2018, a copy of which is attached as Annexure R7.
30. The respondent submitted that since last 5 years i.e. from the date of booking on 23.09.2012 till the date of offer of possession in December 2017, the complainant had never raised any issue whatsoever and has now concocted a false story to cover up his own default of non-payment of dues in time and raised false and frivolous issues after accepting the full and final payment towards the delay in possession and has filed the present complaint on such grounds.
31. The respondent submitted that they have completed the construction of the said project and has obtained the OC dated 13.12.2017 for the apartment in question and has already offered the possession to the complainant and the same has been taken up by the complainant vide letter dated 06.05.2018.
32. The respondent submitted that the hon'ble authority has no jurisdiction to go into the interpretation of the rights of the parties in accordance with the apartment buyer's agreement



signed by the complainant. Rather the agreement that has been referred to for the purpose of adjudication of the complaint is the apartment buyer's agreement dated 22.10.2012 which has been executed much prior to the coming into force of the said Act or rules. Thus the complaint is liable to be rejected.

DETERMINATION OF ISSUES

33. In regard to the **first issue** raised by the complainant, the issue cannot be ascertained as there is no mention of any specific due date of possession from which the delay is to be calculated nor there is any mention of the manner of calculating date of possession in the agreement clause so the delay cannot be ascertained.

34. In regard to the **second issue** raised by the complainant, as per clause 7(d) of the agreement the promoter can alter, increase or decrease the super area more than 10% of the apartment any time prior to and upon the grant of OC, thus the increase in the super area is as per the terms and conditions of the agreement which is sacrosanct in this case.



35. In regard to **third issue** raised by the complainant that he had booked an apartment No.B-1301, B-Block with the respondent on 23.9.2012, but the date of delivery of possession of the said unit is not mentioned in the BBA executed between the parties. It has been alleged that indemnity bond dated 14.2.2018 had been got signed from the complainant under duress and pressure. That he has signed the statement before taking over the possession under duress or force cannot be given any credence on two counts (a) the indemnity bond is dated 14.2.2018 (b) besides this, he has taken over the possession of the flat.

Decision and directions of the authority

36. 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.”

37. 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.

Powers of Authority to issue directions

38. 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.

Findings and directions of the authority

39. 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.



40. Complainant is demanding delayed possession charges at this belated juncture. However, he is unable to prove any force or duress w.r.t. signing of indemnity bond. No doubt, the builder is always in dominating position. Since there is no date of handing over possession, as such, the actual date of delivery of possession cannot be computed in any manner by any means of cognizance. As such, cognizance of his plea at this juncture cannot be taken

41. 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. It has been alleged by the complainant that he had booked an apartment no. B-1301, B-Block with the respondent on 23.9.2012, but the date of delivery of possession of the said unit is not mentioned in the BBA executed between the parties. It has been



alleged that indemnity bond dated 14.2.2018 has been signed from the complainant under duress and pressure.

- ii. Complainant had been given possession of his flat on 6.5.2018 and he has taken over the possession of the apartment. Document attached by the complainant with the complaint are illegible and are the reverse copy of photostat, as a result of which they are unreadable. However, it has been accepted by the complainant that there is no date of delivery of possession in BBA dated 23.9.2012. Original BBA is lying with the builder as well as with the bank from where he took a loan of Rs.30 lakhs which he has yet to repay to the bank. Main plea taken by the complainant that he has signed the statement before taking over the possession under duress or force cannot be given any credence on two counts (a) the indemnity bond is dated 14.2.2018 (b) besides this, he has taken over the possession of the flat.



42. Complaint stands disposed off.

43. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 20.11.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	164/2018 case titled as Mr. Vikas Sareen Vs. M/s Ramprastha Promoters And Developers Ltd.
Complainant	Mr. Vikas Sareen
Represented through	Mr. Vikas Sareen, son of Shri Balraj Sareen, Engineer, resident of
Respondent	M/s Ramprastha Promoters and Developers 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.

It has been alleged by the complainant that he had booked an apartment No.B-1301, B-Block with the respondent on 23.9.2012, but the date of delivery of possession of the said unit is not mentioned in the BBA executed between the parties. It has been alleged that indemnity bond dated 14.2.2018 had been got signed from the complainant under duress and pressure. Complainant had been given possession of his flat on 6.5.2018 and he has taken over the possession of the apartment. Document attached by the

complainant with the complaint are illegible and are the reverse copy of photostat, as a result of which they are unreadable. However, it has been accepted by the complainant that there is no date of delivery of possession in BBA dated 23.9.2012. Original BBA is lying with the builder as well as with the bank from where he took a loan of Rs.30 lakhs which he has yet to repay to the bank. Main plank/plea taken by the complainant that he has signed the statement before taking over the possession under duress or force cannot be given any credence on two counts (a) the indemnity bond is dated 14.2.2018 (b) besides this, he has taken over the possession of the flat.

Now, he is demanding delayed possession charges at this belated juncture. However, he is unable to prove any force or duress w.r.t. signing of indemnity bond. No doubt, the builder is always in dominating position. Since there is no date of handing over possession, as such, the actual date of delivery of possession cannot be computed in any manner by any means of cognizance. As such, cognizance of his plea at this juncture cannot be taken.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)