

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

Complaint No. : 295 of 2018
First date of hearing: 18.07.2018
Date of Decision : 17.10.2018

Mr. Parmil Kumar Agarwal
R/o 80 A, Panchsheel Colony Behind Syndicate
Bank Kosi Kalan Mathura

Complainant

Versus

1. M/s RamprasthaSare Realty Private Ltd.
R/o C-10,C Block Market, Vasant Vihar, New
Delhi-110057
2. Sare Gurugram Pvt. Ltd.
R/o E-7/12, LGF, Malviya Nagar, New Delhi
South Delhi 110017

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sushil Yadav Advocate for the complainant
Shri Manoj Kumar Advocate for the respondents



ORDER

1. A complaint dated 18.05.2018 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. Parmil Kumar Agarwal against the promoters M/s Ramprastha Sare Realty Pvt. Ltd. and Sare Gurugram Pvt. Ltd. on account of violation of clause 3.3 of the flat buyer agreement executed on 31.08.2013 for unit no. T160203, 2nd floor, building no. T16 in the project “GreenParC II forming part of Crescent ParC”, Sector-92, Gurugram for not giving possession on 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	“Green ParC II forming part of Crescent ParC”, Sector-92, Gurugram
2.	Registered/ unregistered	Registered
3.	Due date of possession as per registration	31.03.2019
4.	Plan	Construction linked plan
5.	Unit no.	T160203, tower T16 and 1261sq.ft.
6.	Date of flat buyer agreement	31.08.2012
7.	Total cost	Rs. 61,13,415/-
8.	Total amount paid by the complainant	Rs. 60,77,640/-
9.	Percentage of consideration amount	99% approx..
10.	Date of delivery of possession. Start of construction i.e.10.01.2013.	Clause 3.3 i.e. 36 months from the date of commencement of the construction+ with 6 months



		grace period i.e.29.02.2016
11.	Delay of number of months/ years upto 25.09.2018	2 years 3 months
12.	Penalty Clause as per builder buyer agreement dated	Clause 3.3- Rs. 5/- per sq. ft. per month
13.	Cause of delay in delivery of possession	Due to force majeure

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 respondents. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondent appeared on 18.07.2018. The case came up for hearing on 18.07.2018, 04.09.2018, 26.09.2018 and 17.10.2018. The reply has been filed on behalf of the respondents on 31.08.2018 which has been perused.

Facts of the complaint

4. Briefly stated, the facts of the case as culled out from the case of complainant are that Mr. Santosh Kumar Ojha booked an apartment flat admeasuring 1261 sq. ft. in aforesaid project of the respondent for basic sale price of Rs.49,11,595/- and total sale consideration is Rs. 61,13,415/- which includes BSP, car parking, IFMS, club membership, PLC etc. That the complainant with the consent and permission of the respondents purchased



the said flat from aforesaid Mr. Santosh Kumar Ojha on 14.05.2013 and the respondents endorsed names of the complainant on the flat buyers agreement in June 2013. Out of the total sale of 61,13,415/- the complainant made payment of Rs 60,77,640/- to the respondent.

5. The complainant made payment of Rs. 60,77,640/- to the respondent vide different cheques on different dates, the details of which are as annexed. That as per flat buyers agreement dated 31.08.2012 the respondents had allotted a unit bearing no. T160203 on 2nd floor in tower-16 having super area of 1261 sq. ft. to the complainant. That as per para 3.3 of the flat buyer agreement dated 31st August 2012, the respondents had agreed to deliver the possession of the flat within 36 months with an extended period of six months.
6. The complainant submitted that he has regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. The only intention of the respondents was to take payments for the tower without completing the work. That despite receiving of 99% approximately payment of almost all the requests raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the



complainant, the respondents have failed to deliver the possession of the allotted flat to the complainant within stipulated period and the respondent has incorporated the clause in one sided flat buyer 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 @ 2% per annum, interest rate, respondent charges, 18% per annum interest on delayed payment.

7. The complainant stated that on the ground of parity and equity the respondents also be subjected to the same rate of interest then the respondents are liable to pay interest on the amount paid by the complainant @ 18% per annum to be compounded from the promise date of possession till the flat is actually delivered to the complainant.
8. The complainant submitted that he has requested the respondents several times on making the telephonic calls and also personally visiting the office of the respondents either to deliver a 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 respondents have flatly refused to do so.



9. The complainant submitted that the respondents have installed big generators sets adjacent to the tower in which the unit has been allotted to complainant, and same were not the part of the lay out plan which was shown and given to the complainant at the time of selling the unit by respondents and the same was shown as market shops and green area but the respondents installed the generators which creates huge sound and frequency and the complainant is allergic to smoke and medically he cannot live near generators and have gone under 2 sinusitis allergic operations.

10. **Issues raised by the complainant**

- i. The respondents are not completing the construction. It could be seen here that the respondents have incorporated the clause is one sided buyer agreement which is unjustified.
- ii. That flat has not been handed over to the petitioner until today and there is no reasonable justification for the delay.
- iii. Whether the respondents made relocation of D.G Sets from the current location to appropriate location.

11. **Relief sought by the complainant:**

- i. Direct the respondents to pay interest calculated @ 18% per annum on compound rate from the committed date



of possession i.e. 29.02.2016 on the entire sum paid by the complainant to the respondents and to continue paying such interest till the possession is handed over by the respondents to the complainant.

- ii. Direct the respondents to refund the amount of Rs. 60,77,640/- along with interest @ 18% per annum on compounded rate from the date of booking of the flat in question
- iii. Direct the respondents to relocate the DG Sets to appropriate places.

Respondent's reply

The respondents submitted various preliminary objections and submissions. They are as follow:

12. The Respondents submitted that i.e. M/s Ramprastha Sare Realty Pvt.Ltd. (R1) has been changed to SARE Gurugram Pvt. Ltd. and the present reply is being filed on behalf of SARE Gurugram Pvt. Ltd. and it is submitted that the respondents are developing a larger residential group housing project over land measuring 48.82 acres in Sector 92, village Wazipur and Mewka, Gurugram. The entire project is developed by the respondents in five phases. The unit of the complainant falls



under Phase IV which has been separately registered under RERA vide registration no. 270 of 2017.

13. The subject project i.e. The Petioles, Green Parc 2 forming part of Crescent ParC , Sector-92, Gurugram, has been registered with HRERA, Gurugram and registration certificate dated 09.10.2017 has been issued by HRERA. The registration certificate is valid for a period till 31.03.2019. Therefore, the respondents have been allowed to complete the project by 31.03.2019.
14. The respondents submitted that the flat bearing no. T160203, 2nd Floor, having super area 1261 sq. ft.in project Green Parc 2, Crescent ParC, 2nd floor, tower 16 in Gurugram, was allotted by the respondents to Mr. Santosh Kumar Ojha ('Initial Allottee') and the respondents entered into legally binding flat buyer's agreement dated 31.08.2012 with the initial allottee. Thereafter, the unit was endorsed in the name of the complainant on 12.07.2013. The parties are bound to follow the terms and conditions of the FBA and in case of delay in possession necessary provisions for payment of compensation to allottee has been incorporated therein. Therefore, any relief beyond the terms and conditions of the FBA are unjustified. The clause 3.3 of the FBA provides timeline for possession of



the unit. **The respondents submitted that the construction was started on 10.01.2013.**

Reply to Brief Facts

15. The respondents submitted that the complainant along with the initial allottee requested the respondents for transfer of unit by assignment vide an application dated June 2013 and the respondents endorsed the unit in favour of the complainant in July, 2013. The complainant paid an amount of Rs. 60,77,640/-
16. The respondents submitted that the respondents are not at all under an obligation to pay interest at the rate of 18% per annum and submitted that the complainant and the respondents entered into a legally binding FBA dated 31.08.2012 and any relief should be provided in accordance with the terms and conditions of the FBA. Any kind of relief beyond the terms and conditions of the FBA would be unjustified and contrary to the law.
17. The respondents submitted that the respondents are in process of completing the construction of the unit and is attempting to complete the project as per the time line provided under RERA registration certificate i.e.31.03.2019. It is further submitted that the plan opted by the complainant is a construction linked plan which payment of instalments is the very essence of the



completion of the project. Providing any kind of refund to the complainant would stop the progress of the project and this would make the completion of the project troublesome and such relief shall act as an impediment in completion of the project that too when the progress of the project is in advance stage.

18. The respondents stated that the generator set has been installed as per the layout plan and as per norms, and the same has been confirmed by the consultant's letter.

19. **Determination of issues**

- i. Regarding the **first issue**, raised by the complainant, the agreement is one sided accordingly, the due date of possession was 29.02.2016. As far as the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in ***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.”

- ii. Regarding the **second issue**, raised by the complainant, from the perusal of the facts of the present matter, as per clause 3.3 of the said agreement, the respondents had to deliver the possession of the said unit to the complainant by 29.02.2016 and have failed to do so. Therefore, the respondent company have caused unjustifiable delay.
- iii. Regarding the **third issue**, raised by the complainant, the authority is view that DG sets which produces disturbing fuming sound has been installed which is against sanctioned plan as approved by the competent authority i.e. Director General Town and Country Planning. As per the provisions of the law, it is to be ascertained by examining the sanctioned plan is installation of DG set is violative of the sanctioned plan approved by the competent authority, in that case, builder/promoter is directed to shift the same at an appropriate place after getting due sanction from the



DTCP or install the same at its original place as per the sanctioned plan.

20. As per clause 3.3 of the builder-buyer agreement, the Company proposed to hand over the possession of the said unit by 29.02.2016. The clause regarding possession of the said unit is reproduced below:

“ 3.3 POSSESSION OF FLOOR

Construction of the flat is likely to be completed within a period of 36 months from the date of commencement of construction, with a grace of six months.....”

21. As the possession of the flat was to be delivered by 29.02.2016 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana 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.”

22. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

“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.”

It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act 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.

23. As per obligations on the promoter under section 18(1) proviso, in case the allottee wishes to withdraw from the project, the promoter is obligated to refund the amount paid



by the complainant along with interest at the prescribed rate as the promoter has not fulfilled his obligation. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

24. 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.



25. Keeping in the view of the authority as per clause 3.3 of the builder buyer agreement dated 31.08.2012 executed inter-se the parties, with regard to delivery of possession, the due date of possession comes out to be 29.02.2016 which has been accepted by the counsel for the complainant. Project stands delayed by 2 years 3 and months as on date. Project is registered with the RERA and revised date of possession is 31.03.2019. During hearing an issue has been raised by the complainant that in front of his unit, earlier green belt was shown by the builder. However, now at the moment, DG sets which produces disturbing fuming sound has been installed which is against sanctioned plan as approved by the competent authority i.e. Director General Town and Country Planning. As per the provisions of the law, it is to be ascertained by examining the sanctioned plan is installation of DG set is violative of the sanctioned plan approved by the competent authority, in that case, builder/promoter is directed to shift the same at an appropriate place after getting due sanction from the DTCP or install the same at its original place as per the sanctioned plan.



26. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondents:

- i. The respondents are directed to give the physical possession of the said flat to the complainant on the date committed by the respondents for handing over the possession, i.e. by 31.03.2019.
- ii. The respondents are duty bound to pay the interest at the prescribed rate i.e. 10.45% per annum w.e.f. 29.02.2016 as per provisions of Section 18 (1) of the Real Estate (Regulation And Development) Act, 2016 till handing over possession of the unit.
- iii. The respondents are directed to pay interest accrued from 29.02.2016 to 31.03.2019 on account of delay in handing over of possession which shall be paid to the complainant after adjusting any due against the allottee within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month. Further, if possession is not handed over by



30.04.2019, then the complainant shall be at liberty to the refund of the amount already deposited with the promoter along with the prescribed interest u/s section 19(4) of the Act *ibid*.

27. The order is pronounced.

28. Case file be consigned to the registry.

(Samir Kumar)

Member

(Haryana Real Estate Regulatory Authority, Gurugram)

(Subhash Chander Kush)

Member

Dated : 17.10.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 17.10.2018
Complaint No.	295/2018 Case titled as Mr. Pramil Kumar Agarwal V/s M/s Ramprstha Sare Realty Pvt. Ltd.
Complainant	Mr. Pramil Kumar Agarwal
Represented through	Shri Sushil Yadav, Advocate for the complainant
Respondent	M/s Ramprstha Sare Realty Pvt. Ltd.
Respondent Represented through	Shri Manoj Kumar, Advocate for the respondent.
Last date of hearing	26.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments advanced by the counsel for the parties heard.

As per clause 3.3. of the Builder Buyer Agreement dated 31.8.2012 executed inter-se the parties, with regard to delivery of possession, the due date of possession comes out to be 29.2.2016 which has been accepted by the counsel for the complainant. Project stands delayed by 2 years 3 and months as on date. Project is registered with the RERA and revised date of possession is 31.3.2019. In view of this, the complainant is entitled to prescribed rate of interest @ 10.45% per annum w.e.f. 29.2.2016 as per provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till handing over possession of the unit. The arrears of interest accrued so far shall be paid 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.

During hearing an issue has been raised by the complainant that in front of his unit, earlier green belt was shown by the builder. However, now at the moment, DG sets which produces disturbing fuming sound has been installed which is against sanctioned plan as approved by the competent authority i.e. Director General Town and Country Planning. As per the provisions of the law, it is to be ascertained by examining the sanctioned plan is installation of DG set is violative of the sanctioned plan approved by the competent authority, in that case, builder/promoter is directed to shift the same at an appropriate place after getting due sanction from the DTCP or install the same at its original place as per the sanctioned plan. The complaint stands disposed of. Detailed order shall follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
17.10.2018