

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

Complaint No. : 314 of 2018
First date of hearing: 19.07.2018
Date of Decision : 17.10.2018

Mrs Kamla Bai jain R/O House no-389,
First Floor, Sector 15 Part-I Gurugram **...Complainant**

Versus

1. M/S Ramprastha Sare Realty Private Limited having Registered office at C-10, C Block Market, Vasant Vihar, New Delhi-110057
2. Sare Gurugram Private Limited Registered office E-7/12, LGF, Malviya Nagar, New Delhi 110017 **...Respondents**

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant with Shri
Sushil Yadav and Chhote lal Advocate for the complainant
saini

Mr. Manoj Kumar, Mr. Vijay
Kaundal of SRGR Law
Offices authorized
representative on behalf of Advocate for the respondent
SARE Gurugram Pvt Ltd.



ORDER

1. A complaint dated 10.05.2018 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 Mrs Kamla Bai jain, against the promoter M/S Ramprastha Sare Realty Private on account of violation of Clause 3.3 of the flat-buyer agreement executed on 13.02.2013 for unit no T160202. in the project "Green ParcII" 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 ParcII , Crescent Parc, Sector-92, Gurugram
2.	Unit no.	T160202
3.	Basic sale price	Rs. 4470250/-
4.	Total amount paid by the complainant	Rs. 5581500/-
5.	Percentage of consideration amount	99% Approx.
6.	Date of delivery of possession.	Clause 3.3 - 36 months+6 months from commencement of construction i.e. 13-08-2016
7.	Delay of number of months/ years upto 17-10-2018	2 years 2 Months 4 days
8.	Penalty Clause as per builder	Clause 3.2- Rs. 5/- per



	buyer agreement dated	sq. ft. per month
9.	Cause of delay in delivery of possession	Due to force majeure

3. As per the details provided above, which have been checked as per record of the case file, a flat buyer agreement is available on record for Unit No. T160202 according to which the possession of the aforesaid unit was to be delivered by 13-08-2016. The promoter has failed to deliver the possession of the said unit to the complainant by the due date as per builder buyer agreement dated 13.02.2013. 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 for appearance. Accordingly, the respondent appeared on 19.07.2018. The case came up for hearing on 04.09.2018, 26.09.2018. The reply has been filed on behalf of the respondent on 04.09.2018.



FACTS OF COMPLAINT

5. That the respondent gave advertisement in various leading newspapers and electronic media about their forthcoming project named Green Parc II at Crescent ParC, Sector-92 Gurgaon promising various advantages, like world class

amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the advertisements Mr. Ajay Jain booked an apartment/flat admeasuring 1261 sq. ft. in aforesaid project of the respondents for basic sale price of Rs.4470250/- and total sale consideration is Rs.6113415/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.

6. The said flat from aforesaid Mr. Santosh Kumar Ojha on 14.05.2013 and the respondents that the complainant with the consent and permission of the purchased respondent endorsed names of the complainant on the flat buyers agreement in June 2013. Out of the total sale consideration of amount 5792069, the complainant made payment of Rs. Rs. 5581500/- to the respondent.
7. The complainant made payment of Rs.5581500/- to the respondents vide different cheques on different dates, the details of which are as annexed. That as per flat buyers agreement dated 13.02.2013 the respondents allotted a Unit/Flat bearing No T160202 on 2nd Floor in tower-16 having super area of 1261 sq. ft. to the complainant. That as per para No.3.3 of the flat buyer agreement dated 13.02.2013, the respondents agreed to deliver the possession of the flat within 36 months with an extended period of six months.



8. That complainant 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. It appears that respondents played fraud upon the complainant. The only intention of the respondent was to take payments for the tower without completing the work. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant. Despite receiving approx. 99% of payment of almost all the demands 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 failed to deliver the possession of the allotted flat to the complainant within stipulated period.
9. That due to this omission on the part of the respondents the complainant have 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 respondents have given possession of the flat on time. That as per clause 3.3 of the flat buyer agreement dated 13.02.2013 it was agreed by the respondents that in case of any delay, the respondents shall pay to 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 respondents have exploited the complainant by not providing the possession of the flat even after a delay of almost 21 months from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondents have 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 @ 2% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

10. 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 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.

ISSUES RAISED BY THE COMPLAINANT

- i. The respondents /firm is 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 till today and there is no reasonable justification for the delay.
- iii. The interest cost being demanded by the respondents /developers are very higher i.e.18% which is unjustified and not reasonable,
- iv. Regarding the facilities and amenities the complainant cannot explain, because the physical possession has not given.
- v. Regarding relocation of D.G Sets from the current location to appropriate location



Relief(s) sought:-

In view of the above, complainant seeks the following relief:

- (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 respondent 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. 5581500/- along with interest @ 18% per annum on compounded rate from the date of booking of the flat in question ;
- (iii) Direct to pay a sum of Rs.30000/- (Rs.Thirty thousand only) cost of litigation.
- (iv) Direct to pay a cost of Rs500000/- (Rs Five lacs only) for the harassment and mental agony suffered by the complainant.
- (v) Direct the respondents to relocate the DG Sets to appropriate places.



REPLY

10. Respondent submitted that the name of the respondent company has been changed to SARE Gurugram pvt ltd. As such, the present reply is being filed on behalf of SARE Gurugram pvt ltd. The certificate of incorporation consequent upon change of name is attached as Annexure R/1 and board resolution is attached as Annexure R/2.
11. The respondent mentioned in his reply that at the very outset it is submitted that the respondent is developing a larger residential group housing project over land measuring 48.818 Acres in Sector 92, village Wazipur and Mewka, Gurugram. This entire project is being developed by the respondent in 5 phases. The unit/flat of the complainant under RERA VIDE Registration No. 270 of 2017. The project details regarding the phase IV has been mentioned in Annexure R/3.
12. The respondent submits that the subject tower/ project has been registered with HRERA, Panchkula and registration certificate bearing Memo No. HRERA-454/2017/1294 dated 9.10.2017 with registration No. 270 of 2017 dated 9.10.2017 has been issued by the authority. As per the registration



certificate, the promoter has been allowed to complete the project till 31.3.2019.

13. The respondent submitted that complainant is not entitled for any relief as prayed for. It may be noted that the complainant got the allotment transferred through of allotment, the complainant was fully aware of the development of the project , therefore now the complainant could not claim that the project has not been completed within the tentative time agreed under the FBA.

14. The RERA Act or the Rules nowhere declares the terms and conditions of existing FBAs/ Agreement for sale (executed prior to the effective date of the act, or ruled) nill or void, therefore the terms of FBA should not be selectively enforced. If developer is expected to complete the project as per the time line given under the FBA, then the delay compensation, OR cancellation / surrender of allotment by the allotte and refund should also be according to the FBA. And various reminders has been issued to the complainant for the payment of amount.

15. The respondent submitted and denied that Flat No. T160202 on 2 floor in tower 16 with super area 1261 square feet was allotted to the Initial Alottee/ complainant. It is submitted



that flat bearing number T160602 consisting of super area 1261 sq. ft., 6 floor, tower T16 in the project Green ParC2 at crescent ParC, Sector- 92 , Gurugram, Haryana , was allotted to Initial allottee and FBA was executed on 13.01.2013. The allotment was later on transferred in name of the complainant on request of Initial Allottee and complainant. As per clause 3.3 of the FBA, the time for delivery of possession was tentative.

16. The respondent submits and denied that complainant is suffering disruption on hid living arrangments, mental torture, agony or incurring financial losses due to the respondent. So are amount of compensation @ 5 per sq. ft. for delay in possession is concerned, the same has already been agreed between the parties under FBA. if they have any objection the same should have been raised at the time of execution of FBA.

17. The Respondent submits 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 attached as Annexure R/14.



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:

18. With respect to the **first issue** raised by the complainant, the authority is of the view that as per clause 3.3 of FBA , possession of flat was to be handover within 36 months from the date of commencement of construction (with a grace period of 6 months) upon receipt of all project related approvals. In the present case construction began on 10.01.2013. Therefore, the due date of handing over possession will be computed from 10.01.2013. Therefore, the due date of handing over possession will be computed from 13.08.2016.
19. Accordingly, the due date of possession was 2nd June 2017 and the possession has been delayed by two year two months and three days till the date of decision. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held 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.”

20. As the possession of the flat was to be delivered by 02nd June 2017 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.”



21. In respect of **second issue** raised by the complainant, the due date of possession of the project in question was 13.08.2016 and the respondents delayed in handing over the possession.
22. In respect of **third issue** raised by the complainant, the respondent submitted that as per FBA signed between both parties it is agreed rate that is i.e 18% . And The RERA Act or the Rules nowhere declares the terms and conditions of existing FBAs/ Agreement for sale (executed prior to the effective date of the act, or ruled) null or void, therefore the terms of FBA should not be selectively enforced.
23. In respect of **fourth issue** raised by the complainant, respondent submits that work is in progress according to the layout plan shown at time of signing of FBA and will be completed by the time provided by the RERA registration certificate. And authority is of view that date mention in registration certificate is the validation date of registration.
24. In respect of **fifth issue** raised by the complainants, authority is of view that D.G sets are installed as per layout plans mention in FBA.



Findings of the authority

25. 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 direction of authority

26. 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 3.3. of the builder buyer agreement dated 13.2.2013 executed inter-se the parties, with regard to delivery of possession, the due date of possession comes out to be 13.8.2016 which has been accepted by the counsel for the complainant. The project stands delayed by 2 years and 2 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. 13.8.2016 as per provisions of



Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till handing over possession of the unit. 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.

ii. 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 set 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 the 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 off.



27.The order is pronounced.

28. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 17.10.2018

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 17.10.2018
Complaint No.	314/2018 case titled as Mrs. Kamla Bai Jain V/s M/s Ramprastha Sare Realty Pvt. Ltd. & Anr.
Complainant	Mrs. Kamla Bai Jain
Represented through	Shri Sushil Yadav Advocate for the complainant.
Respondent	M/s Ramprastha Sare Realty Pvt. Ltd. & Anr.
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 13.2.2013 executed inter-se the parties, with regard to delivery of possession, the due date of possession comes out to be 13.8.2016 which has been accepted by the counsel for the complainant. The project stands delayed by 2 years 2 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. 13.8.2016 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 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.

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 set 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 the 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)