

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	9/2018 case titled as Ramprakash Sharma & Ambika Sharma Vs. Ramprastha Promoters & Developers Pvt. Ltd.
Complainant	Ramprakash Sharma & Ambika Sharma
Represented through	Ramprakash Sharma-Complainant No.1 in person with Shri Sukhbir Yadav, Advocate.
Respondent	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

Shri Sukhbir Yadav Advocate has appeared on behalf of the complainant and filed power of attorney.

Arguments heard.

It has been stated by counsel for the complainant that Apartment Buyer Agreement inter-se the parties was signed on 29.8.2012 and subsequently a supplementary addendum agreement was executed on 15.2.2014. As per clause 15 (a) of the agreement, possession of the unit was to be delivered to the complainant in September 2015 + 120 days which comes to 31.1.2016. However, the builder has not delivered the unit in time.

It has been brought on record that Tower-E where the flat of the complainant bearing No.E-1302, 13th floor is situated, roof slab on 16th floor has been laid. Work on the project is continued. The project is registered with RERA vide No.478 of 2017 and the revised date of delivery of possession is June, 2019. The buyer/complainant is seeking refund on the pretext that licence of builder has been lapsed on 18.2.2018. However, counsel for the respondent has stated that they have applied for renewal of licence. Keeping in view all the pros and cons of the matter, it is admissible that as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, complainant/buyer is entitled for prescribed rate of interest i.e. 10.75% per annum as delayed delivery charges on account of delay in handing over the possession of the unit which is stated to be ready in June, 2019. If the builder fails to deliver the offer of possession of unit on that due date, the complainant is entitled to seek refund from the builder. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

Complaint is disposed of accordingly. 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. : 09 of 2018
**Date of First
Hearing : 10.04.2018**
Date of Decision : 20.11.2018

Mr. Ram Prakash Sharma
Mrs. Ambika Sharma
R/o H. No. A-163, Sarita Vihar, New Delhi-
110076

Complainants

Versus

M/s Ramprashtha Promoters and Developers
Pvt. Ltd.
Corporate Office: 114, Sector-44, Gurugram,
Haryana-122002

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Ram Prakash Sharma
Shri Dheeraj Kapoor

Advocate for the complainant
Complainant in person
Advocate for the respondent



ORDER

1. A complaint dated 28.02.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of The Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainants Mr. Ram Prakash Sharma and Mrs. Ambika Sharma, against the promoter M/s. Ramprashtha Promoters and Developers Pvt. Ltd., on account of violation of clause 15(a) of apartment buyer agreement executed on 15.02.2014, in respect of unit bearing no. 1302, 13th floor, tower E with a super area of 1765 sq.ft. described as below for not handing over the possession on due date i.e. January 2016 which is an obligation 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	"RISE", Sector-37D, Gurugram
2.	Unit no.	E1302, 13th floor, tower E
3.	Registered/ not registered	registered
4.	RERA Regisitratio no.	278 of 2017
5.	Nature of the project	Group housing colony
6.	Payment Plan	Instalment linked Payment Plan
7.	Area of the flat/apartment	1765 sq.ft.
8.	Date of apartment buyer agreement	15.02.2014
9.	Date of booking	27.04.2012
10.	Total consideration amount	Rs. 82,83,311/-



11.	Total amount paid by the complainant	Rs. 60,91,411/-
12.	Date of delivery of possession from the date of execution of apartment buyer agreement	January 2016 Clause 15(a)- possession date as per the agreement September 2015+ 120 days grace period.
13.	Delay for number of months/ years upto date 20.11.2018	2 years 10 months
14.	Penalty clause as per apartment buyer agreement dated 29.08.2012	Clause 17(a) of ABA i.e. Rs.5/- per sq.ft. per month of the super area till the date of possession for the period of delay
15.	Revised date of delivery of possession as per RERA registration	June, 2019

HARERA
GURUGRAM



3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A apartment buyer agreement dated 15.02.2014 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on January 2016

which is including 4 months grace period. The reply was filed by the respondent on 02.05.2018.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 10.04.2018. The case came up for hearing on 10.04.2018, 08.05.2018, 23.05.2018, 19.06.2018, 10.07.2018, 09.08.2018, 16.08.2018, 12.09.2018, 25.09.2018, 23.10.2018 and 20.11.2018. The complainant has filed rejoinder to the reply by the respondent denying each and every contentions raised by the respondent

Facts of the complaint

5. Briefly stating the facts of the complainants, the complainants on 27.04.2012 booked a flat E1302 in RISE project of Ramprashtha Promoters and Developers Pvt. Ltd., at sector-37D, Gurgaon. Pursuant to aforesaid booking of apartment, an apartment buyer agreement dated 29.08.2012 was executed between the parties. On 15.02.2014 another apartment buyer's agreement for the same apartment with certain revision to first agreement dated 29.08.2012 was further executed between the parties.



6. The respondent was required to give possession of the flat to the complainants by September 2015. The respondent vide their email dated September 24, 2016 informed the complainant that they would complete the construction of all towers of the project by 31st December, 2017 which also they have failed to abide.
7. The respondent has not given the possession of the flat till date even after the elapse of about 6 years from the date of booking of the apartment buyer agreement dated 15.02.2014
8. The total consideration of the apartment was fixed at Rs. 82,83,311/- as against which the complainants have paid a total sum of Rs. 60,91,411 to the respondent on various dates. The complainant alleged that despite payment of substantial amount as per payment schedule respondent has not failed to complete the construction and deliver the possession as agree. Therefore, the complainants were compelled to make a request for refund of money already paid along with the interests to the respondent, as the respondent have miserably failed to abide by their contractual obligation.
9. The complainants asked for a copy of their ledger account which showed an outstanding amount of Rs. 3,34,908/- without applicable taxes for demand which was never raised.



The respondent admitted their mistake and the same was rectified by the respondent.

10. The delay in possession has caused financial losses both notional and real and caused real trauma to the complainants.

11. Issues raised by the complainants

- I. Whether the complainants are entitled to refund amount of Rs. 60,91,411/- of all money along with the interest paid to respondent?
- II. Whether the complainants are entitled for compensation of Rs. 40,000/- per month for delay in possession for rent loss suffered from the last date by which possession ought to be given?
- III. Whether the complainants are entitled to compensation for mental agony, legal and other expenses?

12. Relief sought

- I. Direct the respondent to refund the amount Rs. 63,60,233/- paid by the complainants to the respondent along with interest as determined under the Haryana Real Estate (Regulation and Development) Rules, 2017.



- II. Compensation @ Rs.40,000 per month for delay in possession for rent loss suffered by us from the last date by which possession ought to be given to the complainants.
- III. Compensation for mental trauma as Rs. 10,00,000/-
- IV. Legal and other costs as Rs. 2,00,000/-

Respondent's reply

13. The respondent raised preliminary objections upon the maintainability of the complaint and also filed an application for rejection of the complaint on the ground of jurisdiction. The respondent stated that the present complaint is not maintainable in law or facts and the hon'ble authority has no jurisdiction whatsoever to entertain the present complaint. The complaints pertaining to compensation and interest for a grievance under sections 12,14,18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble Authority under rule 28 of the rules.

14. The respondent submitted that even though the project of the respondent is covered under the definition of "ongoing



projects” under rule 2(1)(o) of Haryana Real Estate (Regulation and Development) rules, 2017 and the respondent has already applied for the registration of the project with RERA. The complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before the hon’ble authority under rule 28.

15. The respondent submitted that the complainant is an investor and not a consumer. The complainant never had an intention to buy the apartment for his own personal use and kept on avoiding the performance of his contractual obligations of making timely payments and has filed the complaint on frivolous grounds.

16. The respondent submitted that the respondent has continued with the construction of the project and is in the process of completing the project and will be able to apply for the occupation certificate for the apartment by June, 2019. However, the complainant was only a speculative investor and was not interested in taking over the possession.

17. The respondent submitted that the respondent has made huge investments in obtaining approvals and carrying on the construction. The complainant prevented the respondent from allotting the apartment to any other suitable customer at the



rate prevalent at that time and thus the respondent has occurred huge financial losses on account of breach of contract by the complainant.

Determination of issues

18. As regards to the **first issue** raised by the complainants, the respondent have violated the agreement by not giving the possession on the due date as per the agreement i.e January 2016, so the respondent is entitled to refund the money given by the complainant thus, the authority is of the view that the respondent has failed to fulfil his obligation under 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.”



19. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.75%, for every month of delay till the handing over of possession.

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:

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.

20. As regards to **second and third issue** raised in the complaint, the complainants can seek compensation from the adjudicating officer under the RERA for which a separate application will be filed before the adjudicating officer.



21. The complainants 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.”

22. The complainants 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.”



Findings of the authority

23. The respondent admitted the fact that the project RISE is situated in Sector-37D, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complaint. As the project in question is situated in planning

area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.

24. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.

25. The delay compensation payable by the respondent @ Rs.5/- per sq.ft. per month of the super area till the date of possession as per clause 17(a) of the apartment buyer agreement dated 15.02.2014 is held to be very nominal and unjust. 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.”

26. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the apartment number E1302, 13th floor, tower E to the complainants by the committed date i.e. January 2016 as per the said agreement and the possession has been delayed by 2 years 10 months till the date of decision i.e. 20.11.2018. it has been brought to record that where the unit of the complainant is situated roof slab is on 16th floor has been laid. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession. The project is registered with RERA vide no. 478 of 2017 and the revised date of delivery of possession is June, 2019. Further, the respondent has submitted during the oral arguments that the construction of the project is almost complete and they shall offer the possession of the unit to the complainants by June, 2019. The buyer is seeking refund on



the pretext that license of builder has been lapse on 18.02.2018. However, the counsel for the respondent has stated that they have applied for renewal of license.

Decision and directions of the authority

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

- (i) The respondent is directed to give the physical possession of the said flat to the complainants on the date committed i.e. June, 2019 by the respondent for handing over the possession.
- (ii) The respondent is directed to give interest as delayed delivery charges to the complainants at the prescribed rate of 10.75% on the amount deposited by the complainants for every month of delay from the due date of possession i.e 01.01.2016 till 20.11.2018 within 90 days of this order and thereafter on 10th of every month of delay till the handing over of possession in their application for registration with Haryana Real Estate Regulatory Authority.



- (iii) The respondent is directed to allow the complainant to visit the project site freely.
- (iv) If the possession is not given on the date committed i.e June 2019 by the respondent then the complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

28. The complaint is disposed of accordingly.

29. The order is pronounced.

30. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 20.11.2018

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