

Complaint No. 3262 of 2019

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

Complaint no. : 3262 of 2019
First date of hearing: 22.10.2019
Date of decision : 20.02.2020

Shri. Kanwal Kishore Kabirpanthi
Address: R/o 8103, Sector C-8, Vasant Kunj,
New Delhi-110070

Complainant

Versus

M/s Ramprastha Promoters and Developers
Pvt. Ltd
Address: Plot No. 114, Sector 44,
Gurugram-122002

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Complainant in person with
Shri. Vinod Kapoor
Shri. Dheeraj Kapoor
Ms. Rashmeet Virk

Advocate for the Complainant
Advocate for the Respondent
AR of respondent company

ORDER

1. The present complaint dated 07.08.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the Plot Buyer's Agreement executed inter-se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form: -

S.No	Heads	
1.	Project Name and location of the project	Ramprastha City, Sector 92, 93 and 95, Gurugram
2.	Project Area	128.594 Acres
3.	Nature of the project	Plotted Colony
4.	DTCP license no. and validity status	44 of 2010 Dated 09.06.2010 valid up to 08.06.2016
5.	Name of licensee	Ramprastha Estate Private Limited and 25 others
6.	RERA Registered/not registered	Unregistered
7.	Unit no. (Transferred from F- 47 ⁰⁵¹ to F- 051 ⁰⁴⁷ on page no. 49 of complaint)	1. F-047, Tower F Block (Page no. 25 of complaint) 2. F-051, Tower F Block

Corrected vide order dated 14/09/2020.



		(Page no. 49 of complaint)
8.	Unit measuring	209 Sq. Mtrs. 250 Sq. Yds. (Page no. 25 of complaint)
9.	Date of execution of Plot Buyer's Agreement	24.12.2013 (Page no. 22 of complaint)
10.	Payment plan	Possession Linked Plan (Page no. 70 of complaint)
11.	Total sale consideration	₹41,37,500/- (Page no. 70 of complaint)
12.	Amount paid by the Allottee	₹36,52,500/- (Page no. 33, 42, 74, of complaint)
13.	Due date of delivery of possession as per clause 11(a) and 11(d) of Plot Buyer's Agreement -(30 months + Grace Period of 6 months from the date of execution of agreement)	24.12.2016
14.	Delay in handing over possession till date	Possession has not been offered so far



15.	Status of project	Ongoing
16.	Specific relief sought (in specific terms)	To direct the respondent to immediately deliver the possession and to pay delayed possession charges at prescribed rate of interest per annum for delayed period in handing over the possession of the subject apartment.

3. As per clause 11(a) and 11(d) of the Plot Buyer's Agreement the possession was to be handed over within 30 months from the date of execution of agreement, plus a grace period of 6 months, which comes out to be ~~24.12.2017~~^{24.12.2016}. Clause 11(a) and 11(d) of the Plot Buyer's Agreement is reproduced herein below:

"11. Schedule of Possession

(a) *The Company shall endeavour to offer possession of the said Plot, within thirty (30) months from the date of execution of this Agreement subject to timely payment by the Intending allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan. .*

(b)

(c)

Corrected vide order dated 14/09/2020.



(d) Failure of company to offer possession and payment of compensation:
In the event the Company fails to offer possession of the Said Plot, within thirty(30) months from the date of execution of this agreement then after the expiry of grace period of 6 months from the said 30(thirty)months subject to the Intending Allottee(s) having made all payments as per the Payment Plan and subject to the terms,"

4. The complainant applied for tentative allotment of a plot with Respondent on 11.05.2006 and paid an amount of ₹12,50,000/- through check and receipt for the same was been issued bearing receipt no. 79 dated 11.05.2006 and present in the complaint.
5. The booking of Plot no. ^{051 Block} F-47, Tower F was swapped with Plot no. ^{047 Block} F-051, Tower F with same admeasuring to which the complainant has provided his consent.
6. As per the facts mentioned aforesaid it is crystal clear that as per clause 11(a) and 11(d) of the Plot Buyer's Agreement the unit no. ^{047 Block} F-051, Tower F had to be handed over to allottee within 30 months from the date of execution of Plot Buyer's Agreement, plus a grace period of 6 months which comes out to be 24.12.2016. Whereas the builder has miserably failed in completing the project and handing over the unit to the home buyer for which he has paid an amount of ₹36,52,500/- against the total sale consideration of ₹41,37,500/- Since the builder has failed miserably in completing his obligation as per the provision of section 18(1) of RERA Act the buyer can either seek refund or possession at prescribed rate of interest till the

Corrected vide order
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actual handing over of possession. In the present case the buyer is seeking delayed possession charges.

7. The respondent submitted in its reply that the delay in construction was for the reason beyond its control and as stated in its reply.
8. Arguments of both sides were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time as per clause 11(a) and 11(d) of the Plot Buyer's Agreement.
9. The authority is of the considered view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per terms and conditions of Plot Buyer's Agreement executed between the parties and as such, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.20% per annum on the amount deposited by the buyer with the respondent from the due date of possession till offer of physical possession.
10. By virtue of clause 11(a) and 11(d) of Plot Buyer's Agreement executed between the parties on 24.12.2013, possession of the booked unit was to be delivered within 30 months plus a grace



period of 6 months from the date of Plot Buyer's Agreement, which comes out to be 24.12.2016. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Plot Buyer's Agreement dated 24.12.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. 10.20% p.a. w.e.f. 24.12.2016 till the offer of actual physical possession of the booked unit as per the proviso to section 18(1) of the Act read with rules 15 of the Rules.

11. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act: -
- i. The respondent is directed to pay interest accrued so far at the prescribed rate of 10.20% p.a. for delay in handing over the possession from the due date of possession i.e. 24.12.2016 till the date of this order to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10th of each succeeding months, till the offer of actual physical possession of the unit.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything which is not part of the agreement.
 - iv. Complaint stands disposed of.



HARERA
GURUGRAM

Complaint No. 3262 of 2019

v. File be consigned to registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.02.2020



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GURUGRAM

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- actual handing over of possession. In the present case the buyer is seeking delayed possession charges.
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 10. By virtue of clause 11(a) and 11(d) of Plot Buyer's Agreement executed between the parties on 24.12.2013, possession of the booked unit was to be delivered within 30 months plus a grace



period of 6 months from the date of Plot Buyer's Agreement, which comes out to be 24.12.2016. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Plot Buyer's Agreement dated 24.12.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. 10.20% p.a. w.e.f. 24.12.2016 till the offer of actual physical possession of the booked unit as per the proviso to section 18(1) of the Act read with rules 15 of the Rules.

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 - iii. The respondent shall not charge anything which is not part of the agreement.
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v. File be consigned to registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.02.2020

Judgement uploaded on 02.06.2020



HARERA
GURUGRAM