

PROCEEDINGS OF THE DAY

Day and Date	Friday and 14.12.2018
Complaint No.	674/2018 Case Titled As Ms. Smita Ohri V/S M/S Ramprastha Sare Realty Private Ltd.
Complainant	Ms. Smita Ohri
Represented through	Ms Ritu Mani Talukdar, proxy counsel for Shri Abhimanyu Tewari, Advocate for the complainant.
Respondent	M/S Ramprastha Sare Realty Private Ltd.
Respondent Represented through	Mr. Rahul Yadav, Advocate for the respondent.
Last date of hearing	4.10.2018
Proceeding Recorded by	Naresh Kumari and H.R.Mehta

Proceedings

Arguments heard.

Shri Rahul Yadav, Advocate has appeared on behalf of the respondent and filed power of attorney.

Project is registered with the authority and revised committed date of completion of project/delivery of possession is 31.03.2019 as per registration certificate.

As per clause 3.3 of the Flat Buyer Agreement dated 27.2.2013 for unit No.P011402, 14th Floor, Building No.P01 "The Petioles" in "Green ParC" forming part of Crescent ParC, Sector 92, Gurugram, possession was to be

handed over to the complainant within a period of 36 months + 6 months grace period from the date of commencement of construction i.e. 10.12.2012 which comes out to be **10.6.2016**. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,00,41,870 /- to the respondent.

Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **10.06.2016** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over the offer of possession failing which the complainant is entitled to refund the amount.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date 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)
14.12.2018

Subhash Chander Kush
(Member)
14.12.2018

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

Complaint No. : 674 of 2018
First date of hearing: 14.12.2018
Date of Decision : 14.12.2018

Ms. Smita Ohri
R/O. 1115, Magnolia, DLF Phase 5,
Gurugram

Complainant

Versus

M/s Ramprastha Sare Realty Pvt. Ltd.
Regd. Office: C-10, C Block Market,
Vasant Vihar, New Delhi-110057

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

M/S. Ritu Mani proxy council Advocate for complainant
for Shri Abhimanyu Tewari
Shri Rahul Yadav Advocate for the respondent

ORDER

1. A complaint dated 03.08.2018 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 Ms. Smita Ohri, against the promoter, M/s Ramprastha Sare Realty Pvt. Ltd., on



account of violation of the clause 3.3 of flat buyer agreement executed on 27.02.2013 in respect of apartment described as below for not handing over possession by the due date i.e. 10.06.2016 which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 27.02.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

DTCP license NO. 44 of 2009 and 68 of 2011

Nature of real estate project: Residential project

RERA registration no. 270 of 2017 dated 09.10.2017

1.	Name and location of the Project	"Green ParC " forming part of Crescent ParC, Sector 92, Gurugram.
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2.	Flat/Apartment/Unit No.	P011402, 14 th floor, building no-P01 "The Petioles"
3.	Flat measuring	2093 sq. ft.
4.	Date of completion as per RERA registration certificate.	31.03.2019
5.	Percentage of completion of phase as stated by the respondent	91.51%
6.	Date of start of construction	10.12.2012
7.	Date of execution of FBA	27.02.2013
8.	Total consideration amount as per account statement dated	Rs. 1,00,41,870/-
9.	Total amount paid by the complainant till date	Rs. 1,00,41,870/-
10.	Date of delivery of possession as per clause 3.3 of FBA (36 Months + 6 months grace period from the date of commencement of Construction i.e 10.12.2012)	10.06.2016
11.	Delay of number of years / months/ days till date	2 years 6 months 4 days
12.	Penalty clause as per flat buyer agreement dated 27.02.2013	Sub clause 3 of clause 3 of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat.
13.	Cause of delay in delivery of possession	No valid reason explained by the promoter for the delay.



4. The details provided above have been checked as per record available in the case file. A flat buyer agreement is available on record for the aforesaid apartment according to which the

possession of the same was to be delivered by 10.06.2016. The respondent company has not delivered the possession till date. Neither they have delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the super area of the said flat for the period of such delay as per clause 3.3 of flat buyer agreement dated 27.02.2013.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The reply has been filed on behalf of the respondents. The respondents have supplied the details and status of the project along with the reply.

Facts of the complaint

6. The complainant submitted that on 12.10.2012 the complainant booked a flat with the respondent builder and entered into flat buyers agreement dated 27.12.2013. The agreement at clause 3.3 stipulates that the respondent shall endeavour to hand over possession within 36 months of the date of commencement of construction, with a provision for a 6month extension.



7. The complainant submitted that on 01.12.2012 the complainant was ensured that construction had begun and the complainant was advised to make a lump sum payment.
8. The complainant submitted that by 18.02.2013 the complainant had made payment of Rs. 17,69,078/- for the flat in question the same can be verified by the statement of accounts provided by the Respondents dated 18.02.2013.
9. The complainant submitted that on 26.03.2013 the complainant took a home loan from HDFC Bank for a total amount of Rs. 80,00,000/-. On 01.06.2016 the time limit of 42 months (i.e 36 months + additional 6 months) expired.
10. The complainant submitted that till date i.e. July 2018 the bank has dispersed around 95% of the total loan amount to the builder. It is submitted that as of July 2018 the complainant has paid a total amount of Rs.1,00,41,870/- to the builder.

Issues raised by the complainant

11. The issues raised by the complainant are as follows :-
 - i. **Whether the respondent delayed in handing over the possession of the unit to the complainant?**



- ii. **Whether the complainant is entitled to refund of the entire amount paid to the respondents along with interest?**

Relief Sought

- i. **Refund of Rs. 1,00,41,870/- in terms of section 18(1)(a) of the RERA Act 2016 read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017.**
- ii. **Award interest on Rs.1,00,41,870/-@ 10.25% being the highest marginal cost of lending rate plus 2 % in terms of section 18(1)(a) of the RERA Act 2016 read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017.**

Respondent's reply

12. The respondents have raised various preliminary objections and submissions challenging the jurisdiction of this authority.

They are as follows :



- i. The name of respondent has been changed to SARE Gurugram Pvt. Ltd. and the respondent no.1 is developing a larger residential group housing project over land measuring 48.82 acres, Sector 92, Gurugram. This entire project is being developed by the respondent no. 1 in 5 phases and the said unit of the complainant falls under phase four which has been separately registered vide registration no. 270 of 2017 dated 09.10.2017. As per registration certificate the promoter has been allowed to complete the project till 31.03.2019.
- ii. The respondent submitted that respondent no. 1 is in process of developing inter alia, various residential and commercial projects to the satisfaction of its customers and is doing its level best to implement the project in time and to deliver good quality apartments and to provide excellent services to its customers.
- iii. On request of the complainant the aforesaid unit was allotted to the complainant and parties entered into the flat buyer agreement on 01.03.2013. As per clause 3.3 of FBA, the possession of the unit was to be delivered to the allottee within 36 month + 6 months grace period from the date of



commencement of construction. The construction was started on 10.12.2012.

iv. The registration certificate is valid till 31.03.2019 and as per section 5(3) of the Act, the registration granted under this section shall be valid for a period given by the promoter under section 4(2)(1)(c) of the Act for completion of the project or phase thereof. Therefore respondent no. 1 has been allowed to complete the project by 31.03.2019 hence, the complaint is premature.

v. The Real Estate (Regulation and Development) Act or the Rules nowhere declares the terms and conditions of existing FBA as null and void, therefore the terms of BBA should not be selectively enforced. If the developer is expected to complete the project as per time line given in FBA, then the delay compensation or cancellation/surrender of the allotment by the allottee and the refund should be according to FBA.

vi. The explanation given at the end of prescribed agreement for sale in annexure A of the rules, it has been clarified that the promoter shall disclose the existing agreement for the sale in respect of on-going project and further, that such disclosure



shall not affect the validity of such existing agreement executed with its customers. Therefore, both the parties are bound to follow the terms and conditions of FBA entered between them.

Reply to the alleged brief facts:

13. The respondents submitted that on request made by the complainant for booking a flat in the said project, the respondent agreed to allot a flat to the complainant.
14. Further, the respondents admitted that the respondent issued an allotment letter dated 06.02.2013 in respect of the aforesaid unit.
15. The respondent admitted the fact that the builder buyer agreement was executed on 27.02.2013 in respect of flat bearing no.P011402 with super area 2093 sq. ft. , 14th floor, tower-P01 'The Petioles' in the aforesaid project. As per clause 3.3 of BBA, the company shall endeavour to offer possession of the flat within a period of 36 months from the date of commencement of construction + 6 months grace period and the construction was started on 10.12.2012.



16. The respondent submitted that in case of delay in delivery of possession, appropriate provision for payment of compensation was agreed under BBA and subject to other terms and conditions same would be payable in case of delay. Therefore, demand of the complainant for interest @24% is completely unjustified.

17. The respondent submitted that the loan arrangement between the complainant and the bank is personal obligation of the complainant and is not the duty of the respondent no.1.

18. The respondent submitted that the construction of the project is still in process and the same would be completed by 31.03.2019 and denied the fact that respondent no.1 has deliberately delayed the completion of project for no reasons.

Determination of issues

19. After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the issues wise findings of the authority is as under :

- i. **With respect to first issue:** According to clause 3.3 of flat buyer agreement, the respondent assured delivery of the



booked unit within a period of 36 months from the date of commencement of construction along with 6 months grace period i.e 10.06.2016. However, in the present case the respondents have failed to offer the possession of the booked unit on the assured date.

- ii. **With respect to second issue:** Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. As the project is registered with the authority and revised committed date of completion of project/delivery of possession is 31.03.2019 as per registration certificate. The refund of deposited amount will also have adverse effect on the other allottees. Therefore, the relief sought by the complainant cannot be allowed. However, as per proviso to section 18(1) of the Act, the complainant shall be paid interest for every month of delay calculated at the prescribed rate of 10.75% per annum till the handing over of the possession.



Findings of the Authority

20. Jurisdiction of the authority-

Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by 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.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.



21. The project is registered with the authority and revised committed date of completion of project/delivery of possession is 31.03.2019 as per registration certificate.
22. As per clause 3.3 of the flat buyer agreement dated 27.2.2013 for unit no.P011402, 14th floor, building no.P01 "The Petioles" in "Green ParC" forming part of Crescent ParC, Sector 92, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of commencement of construction i.e. 10.12.2012 which comes out to be 10.6.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,00,41,870 /- to the respondent.
23. Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 10.06.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation And Development) Act, 2016 till the handing over the offer of possession failing which the complainant is entitled to refund the amount.
24. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and



thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

25. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter.
26. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

Decision and directions of the authority

27. 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 respondents in the interest of justice and fair play:

- i. The respondent is directed to pay delay possession charges @ 10.75% p.a. on the paid amount to the complainants from the due date of delivery of



possession i.e. 10.06.2016 till 14.12.2018 (date of offer of possession) amounting to **Rs.27,10,582/-**

- ii. The arrears of interest so accrued @ 10.75% p.a. so far shall be paid to the complainant within 90 days from the date of this order. Thereafter monthly payment of interest of **Rs. 89,958.42/-** till handing over the possession shall be paid before 10th of subsequent month.

28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)

(Subhash Chander Kush)

Member

Member

Haryana Real Estate Regulatory Authority, Gurugram



Date: 14.12.2018

Judgement Uploaded on 08.01.2019