

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

Complaint No. : 217 of 2018
Date of First : 31.05.2018
Hearing :
Date of Decision : 20.11.2018

Dr. Bhim Sain Jhorar, R/o 163, Saket Colony,
Behind Fire Station, Azad Nagar, Hisar-
125001, Haryana **...Complainant**

Versus

M/s Ramprastha Promoters & Developers
Pvt. Ltd.
Office: Plot no. 114, Sector-44, Gurugram,
Haryana-122002 **...Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Complainant and Vivek Jhorar Advocate for the complainant
in person *Sh. Sukhbir Yadav*

Sh. Shobhit Maheshwari,
authorised representative on
behalf of the company with
Shri Dheeraj Kapoor

Advocate for the respondent

ORDER

1. A complaint dated 02.05.2018 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 Dr. Bhim Sain Jhorar, against the promoter M/s Ramprastha Promoters and Developers Private Limited, on account of failure to handover the possession for unit no. E-315 in the project "Ramprastha City" 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	"Ramprastha city" in Village Wazirpur & Mewka, Sector-92, 93, 95
2.	Unit no.	E-315
3.	Project area	128.594 acres
4.	Nature of real estate project	Residential
5.	Registered/ not registered	Not registered
6.	DTCP license	44 of 2010 dated 09.06.2010
7.	Date of booking	10.09.2010
8.	Date of plot buyer agreement	Not executed
9.	Total consideration	BSP-Rs. 51,00,000/- as per provisional allotment letter dated 13.06.2013 (Annexure R-2)
10.	Total amount paid by the complainant	Rs. 61,05,000/-
11.	Payment plan	Payment linked plan
12.	Date of delivery of possession	Note: BBA has not been executed between the parties.
13.	Delay of number of months/ years	Cannot be ascertained



	up to 20.11.2018	
14.	Penalty clause as per plot buyer agreement	Cannot be ascertained

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. No plot buyer agreement is available on record for unit no. E-315. However, the booking was made on 10.09.2010 and till date, the possession has not been handed over to the complainant. The promoter has failed to deliver the possession of the said unit to the complainant. 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 31.05.2018. The case came up for hearing on 31.05.2018, 10.07.2018, 09.08.2018, 16.08.2018, 12.09.2018, 18.09.2018, 21.09.2018, 23.10.2018 and 20.11.2018. The reply has been filed on behalf of the respondent on 20.06.2018.



Facts of the complaint

5. On 10.09.2010, the complainant booked a unit in the project

named "Ramprastha city" in Village Wazirpur and Mewka, Sector-92, 93 & sector 95 by paying an advance amount of Rs. 5,00,000/- to the respondent. Accordingly, the complainant was allotted a unit bearing E-315.

6. On 10.06.2013, an agreement was entered into between the parties in order to show that a 300 sq. yard plot was due to be issued in Sector 92/93/95 and a allotment letter was issued by respondent on 27.06.2013. However, the plot buyer agreement was not executed between the parties. Till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 61,05,000/-.
7. The complainant submitted that an amount of Rs 51,00,000/- was paid by him by 18.10.2010. Thereafter, he kept waiting for possession. Finally, by the month of April 2013, after much shock, astonishment, as well as disappointment, the complainant learned from some sources at Gurugram, that fresh applicants for plotted housing project were getting allotment of plots directly from the respondent. On that, when the complainant pressed the respondent further to give



him something in writing, then the respondent in order to overpower, to dominate and to overawe the complainant, put forward a structure asking for the additional payment, EDC, IDC, ODC for an amount to the tune of Rs 22,20,000/- @ 7400 per square yard.

8. It is further submitted that the complainant has been badly discriminated by the respondent, because when the new applicants of plotted housing plots were being given a payment linked plan, till possession, the complainant was given a welcome letter and a pseudo agreement for plot E-315 (instead of a plot buyer agreement with a conclusive pricing and hand over date) and the complainant was asked to give even EDC, IDC charges in full, before any allotment. Thereafter, the complainant deposited another sum of Rs 10,05,000/- but was again demanded a sum of Rs 12,15,000/.
9. The complainant submitted that he is entitled to same rate of interest for delay period in completion in terms of Real Estate (Regulation and Development) Act, 2016. The "interest" is defined in Section 2 (za) of the above said Act, 2016, which reads as under: -

Section 2(za) "interest" means the rate of interest payable by the promoter or the allottee, as the case may be.



Explanation- For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

10. The complainant submitted that despite repeated calls, and meetings with the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. Further, this resulted in mental trauma to the complainant and ultimately, he suffered a nerve attack. Complainant further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.

11. Issues raised by the complainant

- I. Whether the respondent-developer has failed to honour the terms and conditions of the agreement and other statutory conditions/ approvals and thus, it is liable to be proceeded against under the provisions of Real Estate (Regulation and Development) Act, 2016?
- II. Whether in terms of section 2 of RERA, the respondent-developer is liable to pay 24% interest for the delayed period, in as much as, it is entitled to charge the same interest for delay in payment of sale consideration?



- III. Whether the respondent-developer has misappropriated the sale consideration to paid by the complainant and is liable to disclose complete details of expenses-expenditure incurred on the project?
- IV. Whether the respondent-developer is liable to pay compensation for harassment, unfair trade practices and cost of mental treatment?
12. **Relief sought**
- I. In exercise of powers under section 35 of the Act, direct the respondent to place on record all statutory approvals and sanctions of the project.
- II. In exercise of powers under section 35 of Act and rule 21 of HARERA Rules, 2017, direct the respondent to provide complete details of EDC/IDC and statutory dues paid to the competent authority and pending demands if any.
- III. To direct the respondent to refund entire plotted housing plot payment done so far, paid by the complainant along with interest, in accordance with the provisions of unfair practices from the respondent.
- IV. To direct the respondent to pay compensation of Rs 10,00,000 on account of harassment, mental agony and



hospitalization, caused to the complainant on account of deficiency in service and unfair trade practices.

Respondent's reply

13. The respondent submitted that the complaint filed by the complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The complaints pertaining to compensation and interest for a grievance under section 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 and Development) Act, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble authority under rule- 28.
14. Further proviso to section 71 clearly states that even in a case where complaint is withdrawn from a consumer forum/commission/NCDRC for the purpose of filing an application under the said Act and said rules, the application, if any, can only be filed before the adjudicating officer and not before the regulatory authority.
15. The respondent stated that the permission to withdraw the complaint under proviso to section 71 is applicable only for



the complaints pending before any consumer forum/ commission/NCDRC established under section 9 of the Consumer Protection Act, 1986 and not before any other forum and at the same time, such permission to withdraw has to be for the purpose of filing it before the adjudicating officer under the said Act. It is further submitted that the complainant has filed a false affidavit that no similar complaint is pending while actually the complainant has already filed a complaint before the Deputy-Commissioner cum Chairman, allottees grievance redressal forum, Gurugram and also a criminal complaint for registration of FIR before SSP, Hisar which is now under investigation by Police Station, Sushant Lok and the present complaint should be rejected on this ground alone.

16. The respondent submitted that the statement of objects and reasons as well as the preamble of the said Act clearly state that RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" as provided under the consumer protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a



consumer as he is already the owner and resident of House No. 163, Saket Colony, Azad Nagar, Hisar.

17. It is clear from the above that the complainant is an investor and due to financial crunch, admitted by the complainant in his email, the complainant became a defaulter, having deliberately failed to make the payment of various instalments within the time prescribed which resulted in outstanding dues and delay payment charges.
18. The respondent submitted that the complainant has not come to this authority with clean hands and has concealed the material fact that:
- The complainant along with his son, Vivek Johar, is the joint owner of the plot in question. However, the present complaint has not been filed by both joint owners and therefore is liable to be dismissed on this ground alone.
 - The complainant is a defaulter, having deliberately failed to execute the buyer agreement and make the payment of various instalments within the time prescribed, which resulted in outstanding dues and delay payment charges.
 - The complainant has already filed a complaint before the Deputy Commissioner-cum-Chairman, allottees grievances





redressal forum, Gurgaon and also a criminal complaint for registration of FIR before the SSP, Hisar.

19. The respondent further submitted that despite several adversities, the construction of the project has been in continuance and is in the process of completion and the respondent should be able to apply the occupation/ part completion certificate by 31.12.2025. However, as the complainant is only a speculative investor and not interested in taking over the possession of the said plot and because of slump in real estate market, the complainant failed to execute the requisite documents and thereafter make the payments in time.
20. Respondent further submitted that they have been diligent in completing all their projects and the project in question forms part of other projects under the umbrella of single licence no. 33 of 2008. All the facilities are common for all the projects which have been developed by them.
21. Respondent denied any discrimination on their part towards the complainant and also denies that the complainant was given a welcome letter and a pseudo agreement for unit no. E-315 or the complainant was asked to give in full EDC/IDC, before any allotment, or that in the hope of allotment the





complainant was forced to pay Rs 10,05,000/- or that the complainant was told to pay Rs 12,15,000/- towards the EDC/IDC charges in full for a plot buyer agreement.

Determination of issues

22. Regarding **first issue**, the respondent has failed in delivering the possession to the complainant and has also failed to pay the interest for such delay.
23. Regarding **second issue** raised by the complainant, the authority under Rule 15, HRERA Rules has the power to grant interest to the complainant at the highest lending rate of SBI, which is currently 10.75% per annum.
24. Regarding **third issue** in the complaint, it cannot be said as per the facts shown by the complainant that the respondent has misappropriated the money paid by the complainant.
25. Regarding the **fourth issue**, this authority does not have the power to grant compensation and for that a separate application has to be made before the adjudicating officer.
26. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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 which is reproduced below:

27. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

28. **Jurisdiction of the authority-** The project "Ramprastha city" is located in Village Wazirpur and Mewka, Sector-92, 93 and Sector 95, Gurugram. 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 Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The preliminary objection raised by the respondent regarding subject matter 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 complainant at a later stage.

29. It is pertinent to mention that no agreement was signed inter-se between the buyer and developer. However, an agreement dated 10.6.2013 was signed inter se both the parties which is placed on record which gives a semblance of buyer and developer inter se. The complainant happens to be a retired professor of Chaudhary Charan Singh Agriculture University, Hissar. As per his statement, he has deposited all his gratuity amount with the promoter.
30. Further, in compliance of instructions issued by the authority during last hearing on 23.10.2018, counsel for respondent has submitted a list of plots wherein date of agreement and allotment of plots in vicinity of the plot allotted to the complainant has been mentioned. In the written submissions filed by the complainant, it has been submitted that 'occupation certificate' or 'part completion certificate' will be applied by them by 31.12.2025. However, counsel for the respondent has pointed out that they have already applied for registration of project wherein as per advise of authority, they have mentioned the due date of completion certificate



as December 2020 (during scrutiny of the application, where the revised date of possession is given).

On the other hand, counsel for the complainant has pointed out that the developer has no valid license as on date which stands expired on 08.06.2016. Counsel for the respondent intimated that they have already applied for renewal of the license which is in process with the DTCP. Respondent could not explain whether the service estimates and service plans for this project have been got approved by them from the competent authority. However, counsel for the respondent further stated that they have applied for approval of service estimate and service plans on instructions of the Town and Country Planning Department.

31. Keeping in view the status of the project in question and the prevailing circumstances, the authority is of majority view that since the project is nowhere near commencement itself, leaving aside the completion, as such there is no choice left with the authority but to order for refund of the amount paid by the complainant along with prescribed rate of interest @ 10.75% per annum within 90 days.



Decision and directions of the authority

32. 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:
- (i) The respondent is directed to refund to the complainant the principal sum of Rs.61,05,000/- paid by him on account of the failure of the respondent in handing over the possession within 90 days from the date of this order.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% per annum on the amount deposited by the complainant. The interest will be given from the date of deposit of amount by the complainant within 90 days from the date of this order.
33. The complaint is disposed of accordingly.
34. The order is pronounced.
35. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.



(Sami Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 20.11.2018

Corrected Judgement uploaded on 18.01.2019

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4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 31.05.2018. The case came up for hearing on 31.05.2018, 10.07.2018, 09.08.2018, 16.08.2018, 12.09.2018, 18.09.2018, 21.09.2018, 23.10.2018 and 20.11.2018. The reply has been filed on behalf of the respondent on 20.06.2018.

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Explanation- For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

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- II. Whether in terms of section 2 of RERA, the respondent-developer is liable to pay 24% interest for the delayed period, in as much as, it is entitled to charge the same interest for delay in payment of sale consideration?



- III. Whether the respondent-developer has misappropriated the sale consideration to paid by the complainant and is liable to disclose complete details of expenses-expenditure incurred on the project?
- IV. Whether the respondent-developer is liable to pay compensation for harassment, unfair trade practices and cost of mental treatment?

12. Relief sought

- I. In exercise of powers under section 35 of the Act, direct the respondent to place on record all statutory approvals and sanctions of the project.
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Respondent's reply

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14. Further proviso to section 71 clearly states that even in a case where complaint is withdrawn from a consumer forum/commission/NCDRC for the purpose of filing an application under the said Act and said rules, the application, if any, can only be filed before the adjudicating officer and not before the regulatory authority.

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Determination of issues

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30. Further, in compliance of instructions issued by the authority during last hearing on 23.10.2018, counsel for respondent has submitted a list of plots wherein date of agreement and allotment of plots in vicinity of the plot allotted to the complainant has been mentioned. In the written submissions filed by the complainant, it has been submitted that 'occupation certificate' or 'part completion certificate' will be applied by them by 31.12.2025. However, counsel for the respondent has pointed out that they have already applied for registration of project wherein as per advise of authority, they have mentioned the due date of completion certificate



as December 2020 (during scrutiny of the application, where the revised date of possession is given).

On the other hand, counsel for the complainant has pointed out that the developer has no valid license as on date which stands expired on 08.06.2016. Counsel for the respondent intimated that they have already applied for renewal of the license which is in process with the DTCP. Respondent could not explain whether the service estimates and service plans for this project have been got approved by them from the competent authority. However, counsel for the respondent further stated that they have applied for approval of service estimate and service plans on instructions of the Town and Country Planning Department.

31. Keeping in view the status of the project in question and the prevailing circumstances, the authority is of majority view that since the project is nowhere near commencement itself, leaving aside the completion, as such there is no choice left with the authority but to order for refund of the amount paid by the complainant along with prescribed rate of interest @ 10.75% per annum within 90 days.



Decision and directions of the authority

32. 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:

(i) The respondent is directed to refund to the complainant the principal sum of Rs.61,05,000/- paid by him on account of the failure of the respondent in handing over the possession within 90 days from the date of this order.

(ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% per annum on the amount deposited by the complainant. The interest will be given from the date of deposit of amount by the complainant within 90 days from the date of this order.

33. The project is registerable and has not been registered by the promoters. The authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act.

34. The complaint is disposed of accordingly.

35. The order is pronounced.



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

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.11.2018

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	217/2018 case titled as Dr. Bhim Sain Jhorar Vs. M/s Ramprastha Promoters & Developers Pvt. Ltd.
Complainant	Dr. Bhim Sain Jhorar
Represented through	Complainant in person with Shri Sukhbir Yadav, Advocate.
Respondent	M/s 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.

Respondent- M/s Ramprastha Promoters & Developers Pvt. Ltd. has allotted a plot measuring 300 square yards (plot No.E-315, Ramprastha City, Sectors 92, 93 and 95, Gurugram on 10.9.2010). Complainant/buyer has deposited an amount of Rs.61,05,000/- out of total approximate consideration of Rs.71,10,000/- inclusive EDC, IDC expenses. No BBA was

signed inter-se between the buyer and builder. However, an agreement dated 10.6.2013 was signed inter se both the parties which is placed on record which gives a semblance of buyer and developer inter se. The complainant happens to be a retired professor of Chaudhary Charan Singh Agriculture University, Hissar. As per his statement, he has deposited all his gratuity amount with the promoter.

In compliance of instructions issued by the authority during last hearing on 23.10.2018, counsel for respondent has submitted a list of plots wherein date of agreement and allotment of plots in vicinity of the plot allotted to the complainant has been mentioned. Statement has been placed on record. In the written submissions filed by the complainant, it has been submitted that 'occupation certificate' or part 'completion certificate' will be applied by them by 31.12.2025. However, counsel for the respondent has pointed out that they have already applied for registration of project wherein as per advise of authority, they have mentioned the due date of completion certificate as December 2020 (during scrutiny of the application, where the revised date of possession is given).

On the other hand, counsel for the complainant has pointed out that the developer has no valid licence as on date which stands expired on 8.6.2016. Counsel for the respondent intimated that they have already applied for renewal of the licence which is in process with the DTCP. Respondent could not explain whether the service estimates and service plans for this project have been got approved by them from the competent authority.

However, counsel for the respondent further stated that they have applied for approval of service estimate and service plans on instructions of the Town and Country Planning Department.

In view of the prevailing circumstances, the authority is of majority view that since the project is nowhere near commencement what to talk of completion, as such there is no choice left with the authority but to order for refund of the amount paid by the complainant alongwith prescribed rate of interest @ 10.75% per annum within 90 days.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)