

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 09.01.2019
Complaint No.	483/2018 Case titled as Ms. Dhiraj Kumari Vs. M/s Ramprastha Sare Realty Pvt. Ltd.
Complainant	Ms. Dhiraj Kumari
Represented through	Shri Ayush Negi Advocate for the complainant
Respondent	M/s Ramprastha Sare Realty Pvt. Ltd.
Respondent Represented through	Shri Rahul Yadav Advocate for the respondent.
Last date of hearing	5.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 3.3 of the Builder Buyer Agreement dated 9.7.2013 for unit No. P051902, Tower 5, 19th floor, in project "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 which comes out to be **9.1.2017**. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.93,67,093/- to the respondent against total sale consideration of Rs.1,00,01,618/-.

As per statement of the respondent, project is more than 80% complete. Project is registered and the revised date of delivery of possession

is 31.3.2019. However, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 9.1.2017 till handing over the possession as per provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

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)
9.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 483 of 2018
First date of hearing: 23.8.2018
Date of decision : 9.1.2019

Ms. Dhiraj Kumari,
R/o. C-204, Ekta Satya Shanti Apartments,
Sector-13, Rohini, Delhi

Complainant

Versus

M/s Ramprashtha Sare Reality Pvt. Ltd.
Regd. Office: Crescent ParC, Sector-92,
Pataudi Road, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mrs. Nishtha Gupta Complainant in person
Shri Manish Misra Advocate for the complainant
Shri Manoj Kumar Advocate for the respondent

ORDER

1. A complaint dated 22.5.2018 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. Dhiraj Kumari, against the promoter M/s Ramprashtha Sare Reality Pvt. Ltd. in respect of apartment/unit described below in the



project 'Green ParC', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 9.7.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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 case are as under: -

1.	Name and location of the project	"Green ParC", Sector 92, District Gurugram
2.	Apartment/unit No.	P051902, 19 th floor, tower-P05
3.	Flat measuring	2093 sq. ft'
4.	RERA Registration no.	270 of 2017
5.	Nature of real estate project	Residential project/colony
6.	RERA registered/ not registered.	Registered
7.	Date of execution of flat buyer's agreement	9.7.2013
8.	Payment plan	Construction linked payment plan
9.	Basic sale price	Rs.1,00,01,618/-
10.	Total amount paid by the complainant till date	Rs. 93,67,093/-
11.	Date of delivery of possession as per clause 3.3 of flat buyer's agreement (36 Months + 6 months grace period from the date of	9.7.2016



	commencement of construction)	
12.	Delay in handing over possession till date	2 years 3 months 26 days
13.	Penalty clause as per flat buyer's agreement dated 29.08.2013	Clause 3.3 of the agreement i.e. Rs.5/- per sq. ft per month of the saleable area of the flat for the period of further delay.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A flat buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by . Neither the respondent has delivered the possession of the said unit till 9.7.2016 to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the saleable area of the flat for the period of further delay as per clause 3.3 of flat buyer's agreement dated 9.7.2013. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 23.8.2018, 5.12.2018 and 9.1.2019.



Facts of the complaint

6. That the complainant booked a flat with Ramprastha in their project at Sector-92 vide buyer's agreement dated 9.7.2013. the complainant has already paid Rs.93,67,093 as consideration.
7. That clause 3.3 of buyer's agreement provides that the possession would be given within 36 months + 6 months grace period. At the expiration of the said period the respondent had to pay compensation @Rs.5/- per sq. ft' per month of super area which has not been paid to the complainant.
8. That the respondent company is not replying even when the complainant is trying to contact them on several occasions. Also, similar issue is not pending before any other authority.
9. **Issues raised by the complainant are as follow:**
 - i. Whether the respondent has failed to provide possession to the complainant as per the time mentioned in the buyer's agreement?
 - ii. Whether the respondent has to pay the complainant @Rs.5/- per sq. ft' per month of super area?



- iii. Whether the respondent shall return money of the complainant with interest of 18% p.a. till the date of payment?

10. Relief sought

The complainant is seeking the following relief:

- i. To direct the respondent to deliver the flat no. P05-Tower Petioles, unit no. P051902 having area of 2093 sq. ft' immediately.
- ii. To direct the respondent to refund the amount of Rs.93,67,093/- along with interest of 18% till actual payment.
- iii. To pass any other order which this hon'ble court may deem fit and proper.

Respondent's reply

11. That the name of the respondent company has been changed to SARE Gurugram Pvt. Ltd. The unit of the complainant falls under phase IV which is separately registered under RERA vide registration no.270 of 2017.

12. That the subject tower i.e. P05 of Petioles at Gree ParC II, Crescent ParC, Sector-92, Gurugram has been registered with RERA, Panchkula vide registration no. 270 of 2017 dated



9.10.2017. as per the registration certificate, the respondent has been allowed to complete the project till 31.3.2019.

13. The parties are bound by the buyer's agreement and clause 3.3 states:

"the company shall endeavour to offer possession of the flat within 36 months from the date of commencement of construction along with 6 months grace period."

14. That the construction was started on 29.10.2012 and the registration certificate is valid till 31.3.2019. RERA nowhere declares that the terms and conditions of the existing agreement will be null/void. If the developer is expected to complete the project as per time line given under FBA, then delay compensation or cancellation of allotment and refund should also be according to the buyer's agreement.

15. That the complainant has been a habitual defaulter during payment of instalments. Various reminders were given to her for payment vide reminders dated 21.11.2012, 3.12.2012 and final reminder dated 11.1.2013. timely payment of these instalments is the essence of the contract and the project could not be completed because of default in payments by various allottees.



Determination of Issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

16. With respect to the **first, second and third issues**, the authority came across that as per clause 3.3 of buyer's agreement. The clause regarding the possession of the said unit is reproduced below:

"3.3 Possession

"the company shall endeavour to offer possession of the flat within 36 months from the date of commencement of construction along with 6 months grace period."

Accordingly, the due date of possession was 9.7.2016 and the possession has been delayed by 2 years 3 months 26 days till date. The respondent has attached registration certificate by RERA as per which the respondent has been given time to complete the project by 31.3.2019. So, the complainant cannot get refund at this point of time and if the promoter fails to deliver the project then the complainant's right to demand compensation and refund will accrue.



17. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 3.3 of buyer's agreement 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."

18. The promoter is liable under section 18(1)(a) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1)(a) is hereby allowed. The authority issues directions to the respondent u/s 37 of



the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e.9.7.2016 till the project is offered.

As the possession of the flat was to be delivered by 9.7.2016 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 Haryana Real Estate (Regulation and Development) Act, 2016.

20. 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 by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.

21. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainant regarding compensation becomes superfluous.



Findings by the authority

22. The project 'Green ParC 2' is located in Sector-92, Gurugram, thus the authority has territorial jurisdiction to entertain this complaint.
23. **Jurisdiction of the authority-** 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.
24. Keeping in view the present status of the project and the extension given to the respondent vide the registration certificate issued by RERA, no refund can be provided at this time. However, as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, the complainant is entitled to get prescribed rate of interest i.e. 10.75% per annum w.e.f. 9.7.2016 till handing over the possession of the unit to the complainant. If the builder fails to hand over the possession of the booked unit to the complainant on the revised committed date i.e. 31.3.2019, in that case, the buyer can seek refund.



Decision and directions of the authority

25. 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 9.7.2013 for unit no. P051902, tower 5, 19th floor, in project "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 which comes out to be 9.1.2017. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.93,67,093/- to the respondent against total sale consideration of Rs.1,00,01,618/-.
- (ii) As per statement of the respondent, project is more than 80% complete. Project is registered and the revised date of delivery of possession is 31.3.2019. However, complainant is entitled for delayed possession charges at prescribed rate of interest i.e.



10.75% per annum w.e.f 9.1.2017 till handing over the possession as per provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

- (iii) 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.

26. The order is pronounced.

27. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 9.1.2019

Judgement uploaded on 29.01.2019

