

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 30.01.2019
Complaint No.	808/2018 Case titled as Mrs. Poonam Chawla And Brig. Dalip Sachdev Vs M/s Ramprastha Promoters & Developers Private Limited
Complainant	Mrs. Poonam Chawla And Brig. Dalip Sachdev
Represented through	Complainant No.2 in person
Respondent	M/s Ramprastha Promoters & Developers Private Limited
Respondent Represented through	Shri Shobhit Maheshwari, authorized representative on behalf of respondent-company with Shri Dheeraj Kapoor, Advocate
Last date of hearing	19.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority and the revised date of offer of possession is 30<sup>th</sup> June 2019**

Arguments heard.

As per clause 15 (a) of the Builder Buyer Agreement dated 4.9.2013 for unit No.1401, 14<sup>th</sup> floor, tower-B, in project "Rise" Sector 37-D, Gurugram, possession was to be handed over to the complainant in September 2015 from the date of execution of BBA + 120 days grace period which comes out to be 31.1.2016. However, the respondent has not adhered to his obligation to hand over the possession of unit in time to the complainant and the project is delayed by 2 years 11 months. Complainant has already paid

Rs.65,95,222/- to the respondent against a total sale consideration of Rs.75,62,328/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 31.1.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the offer of possession failing which the complainant is entitled to seek refund of the amount alongwith prescribed rate of interest i.e.10.75%.

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 10<sup>th</sup> of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

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

Samir Kumar  
(Member)  
30.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint No. : 808 of 2018**  
**Date of First Hearing: 19.12.2018**  
**Date of Decision : 30.01.2019**

Mrs. Poonam Chawla and Brig. Dalip Sachdev  
R/o H. No. 76 -R, New colony,  
Gurugram, Haryana

**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:**

Brig. Dalip Sachdev Complainant no. 2  
Shri Dheeraj Kapoor with Shri Advocate for the respondent  
Shobhit Maheshwari,  
authorized representative on  
behalf of respondent-company



**ORDER**

1. A complaint dated 05.09.2018 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 complainants Mrs. Poonam chawla and Brig. Dalip Sachdeva, 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 04.09.2013, in respect of unit bearing no. 1402, 14<sup>th</sup> floor, tower B with a super area of 1825 sq.ft. described as below for not handing over the possession on due date i.e. 31.01.2016 which is an obligation under section 11 (4) (a) of the Act *ibid*.

2. Since the floor buyer agreement dated 04.09.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

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

1.	Name and location of the project	"Rise", Sector-37D, Gurugram
2.	Unit no.	1401, 14th floor, tower B
3.	Project area	60.5112 acres



4.	Registered/ not registered	Registered
5.	RERA Registration no.	278 of 2017
6.	Nature of the project	Group housing colony
7.	Payment Plan	Instalment linked Payment Plan
8.	Area of the flat/apartment	1825 sq. ft.
9.	Date of apartment buyer agreement	04.09.2013
10.	Date of booking	10.03.2012 (annx. P/4) (Pg- 54)
11.	Total consideration amount (clause 2(a) of the agreement)	Rs. 75,62,328/-
12.	Total amount paid by the complainant (annx P/6)(Pg 81)	Rs. 65,95,222/-
13.	Date of delivery of possession from the date of execution of apartment buyer agreement. Clause 15(a)- possession date as per the agreement September 2015+ 120 days grace period.	31.01.2016
14.	Delay for number of months/ years	2 years 11 months
15.	Penalty clause as per apartment buyer agreement	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
16.	Revised date of delivery of possession as per RERA	30.06.2019



	registration	
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4. 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 04.09.2013 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on January 2016 inclusive of 4 months grace period. However the respondent has failed to fulfil its contractual obligation by neither delivering the possession within stipulated period nor paying the compensation as per terms of agreement dated 04.09.2013.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The came up for hearing on 30.01.2019. Reply has been filed by the respondent on 18.10.2018. The rejoinder has ben filed by the complainant and reasserted the facts of the complaint.



### **Facts of the complaint**

6. The complainants submitted that on 10.03.2012 they booked a 3 BHK flat admeasuring 1825 sq. ft., along with one covered

car parking in the residential project “Rise” Ramprastha city, Sector 37D, Gurugram , Haryana and also paid the initial booking amount of Rs. 500,000,-/.

7. The complainants submitted that they got allotted unit no. B-1401 along with one covered car parking. Before allotment, complainant had to pay amount of Rs.16,42,930/- .Amounting to more than 20% of the project cost.
8. The complainants submitted that respondent executed the apartment buyer agreement on 04.09.2013. By that time respondent had collected a sum of Rs. 22,77,861/-.
9. The complainants submitted that an agreement was signed between the respondent M/s Ramprastha promoter and developer Pvt. Ltd. and the complainants Mrs. Poonam chawla and Brig Dalip Sachdev dated 04.09.2013. As per apartment buyer agreement the flat was to be delivered by September 2015.
10. The complainants submitted that the total cost of the said flat is Rs.75,62,328/- inclusive of covered parking , EDC,IFMS and service tax. Out of this sum of Rs. 65,95,222/- has been paid which constitute more than 85% of the total sale consideration



of the flat. The complainants made all payments in time bound manner as per demand raised by respondent.

11. The complainants submitted that as per the status the project has not developed more than 25-30% (only basic structure has been raised and that is also partially completed ) but the respondent have collected more than 85% of the total sale consideration.

12. The complainants submitted that respondent at no stage informed the complainants about the status and development of the project. It is submitted that respondent within a period of 23 months i.e from 10.09.2013 to 07.05.2015 raised the demand of Rs.42,26,772/-. To meet this huge demand raised by the respondent, complainants had not only liquidated their investment, but had to borrow money through unsecured loans at high rate of interest.

13. The complainants submitted that with good intention he ahs paid all demands raised by respondent amounting to more than 85% of the project cost, however respondent has failed to meet their obligation and commitments. The undue delay in handing over the possession of the flat for more than 3 years from committed date as per agreement is not only breach of trust, but is also indicative of ill intention of the respondent.





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

#### 14. Issues raised by the complainants

- I. Whether the complainants are entitled to refund amount of Rs. 65,95,222/- of all money along with the interest paid to respondent?

#### 15. Relief sought

- I. Direct the respondent to refund the amount Rs. 65,95,222/- paid by the complainants to the respondent along with 18% interest.

#### Respondent's reply

16. 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 submitted 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. It is further submitted that 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 and 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.

17. 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.

18. The respondent submitted that without prejudice to the above, the above stated position is further substantiated by the proviso to section 71 which clearly states that even in a case where a 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.



19. The respondent submitted that the authorization letter in favour of Ms. Priyanka Agarwal is not signed by both the complainants and in the absence of a proper authorization letter, the authorized representative was not authorized to file the present complaint on behalf of both the complainants and hence the present complaint is liable to be rejected.

20. The respondent submitted that the complainants are an investors and not consumers. The complainant never had an intention to buy the apartment for their own personal use and kept on avoiding the performance of their contractual obligations of making timely payments and have filed the complaint on frivolous grounds.

21. 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 30.06.2019. However, the complainants were only speculative investor and were not interested in taking over the possession.

22. The respondent submitted that the respondent has made huge investments in obtaining approvals and carrying on the



construction. The complainants 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 complainants.

### Determination of issues

23. In respect of the **issue raised** by the complainants, as per clause 15(a) of the apartment buyer's agreement dated 04.09.2013, the due date of handing over of possession is 31.01.2016. This shows that the respondent company failed in constructing the project as per agreed terms. As per the RERA registration certificate of the respondent company, the respondent company has undertaken to complete the project by 30.06.2019. Keeping in view the status of the project and the interest of other allottees, it will not be just to allow refund at this stage as the project is nearing completion and the development of the project is at advanced stage. However, the complainants are entitled to delayed possession interest at the prescribed rate of 10.75% p.a. from the date when payments were made till the time of handing over of possession.

24. 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.*

25. 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.”*

26. 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**

27. 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.

28. **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.

29. 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.”*

30. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the



authority has decided to observed that as per clause 15 (a) of the builder buyer agreement dated 04.09.2013 for unit no.1401, 14<sup>th</sup> floor, tower-B, in project "Rise" Sector 37-D, Gurugram, possession was to be handed over to the complainant in September 2015 from the date of execution of BBA + 120 days grace period which comes out to be 31.1.2016. However, the respondent has not adhered to his obligation to hand over the possession of unit in time to the complainant and the project is delayed by 2 years 11 months. Complainant has already paid Rs.65,95,222/- to the respondent against a total sale consideration of Rs.75,62,328/-.

### **Decision and directions of the authority**

31. 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:

1. The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 31.01.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession failing which the





complainant is entitled to seek refund of the amount along with prescribed rate of interest i.e.10.75%.

2. 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 10<sup>th</sup> of subsequent month.

3. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any. सत्यमेव जयते

32. The order is pronounced.

33. Case file be consigned to the registry

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

HARERA  
GURUGRAM



Date: 30.01.2019

Judgement Uploaded on 08.02.2019