

PROCEEDINGS OF THE DAY

Day and Date	Monday and 21.01.2019
Complaint No.	707/2018 Case Titled As Ms. Manila Bhatia & Anr V/S Sare Gurugram Private Limited
Complainant	Ms. Manila Bhatia & Anr
Represented through	Complainants in person with Ms. Priyanjali Singh Advocate
Respondent	Sare Gurugram Private Limited
Respondent Represented through	Shri Rahul Yadav, Advocate for the respondent.
Last date of hearing	9.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

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

Arguments heard.

Complaint was filed on 10.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 29.8.2018, 17.9.2018, 27.9.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and

Rs.10,000/- was also imposed on 27.9.2018 and 29.11.2018 for non-filing of reply even after service of notices.

A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Brief facts of the matter are as under :-

As per clause 3.3 of the Builder Buyer Agreement dated 4.10.2012 for unit No.P060602, 6th floor, Tower P06 Block "The Petioles" in project "Green ParC 2" at Crescent ParC, Sector-92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the commencement of construction i.e 30.10.2012 (as per demand on commencement of construction at page 57 of the complaint) + 6 months grace period which comes out to be 30.4.2016. It was a construction linked plan. Complainant has already paid Rs.94,72,801/- to the respondent against a total sale consideration of Rs. 1,00,45,759/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **30.4.2016** 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)
21.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 707 of 2018
Date of first hearing : 21.01.2019
Date of decision : 21.01.2019

1. Smt. Manila Bhatia
R/o G 10, Madhuban Colony, Tonk Phatak,
Jaipur
2. Sh. Anurag Upadhyaya
R/o 902, A3, Tulip White Apartment,
Sector 69, Gurugram-122018

...Complainants

Versus

M/s Sare Gurugram Pvt. Ltd. (previously
called Ramprastha Sare Realty Pvt. Ltd.)
(through its Managing Director)
Office at: E-7/12, LGF, Malviya Nagar,
New Delhi (South)-110017

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Smt. Manila Bhatia and Sh.
Anurag Upadhyaya
Ms. Priyanjali Singh
Sh. Rahul Yadav

Complainants in person
Advocate for the complainants
Advocate for the respondent

EX-PARTE ORDER

1. A complaint dated 10.08.2018 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 complainants Smt. Manila Bhatia and Sh. Anurag Upadhyaya against the promoter M/s Sare Gurugram Pvt. Ltd. (previously called Ramprastha Sare Realty Pvt. Ltd.) in respect of unit described below in the project 'Green ParC 2, on account of violation of section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer's agreement has been executed on 04.10.2012, 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 are as under: -

1.	Name and location of the project	"Green ParC 2" at Crescent ParC, Sector-92, Gurugram
2.	Project area	48.818 acres
3.	Unit no.	P060602, 6 th floor, tower P06, block "The Petioles"



4.	Unit area	2093 sq. ft.
5.	Registered/ not registered	Registered(270 of 2017)
6.	Revised date of completion as per RERA registration certificate	31.03.2019
7.	DTCP license	44 of 2009 dated 14.08.2009, 68 of 2011 dated 21.07.2011
8.	Date of booking	19.07.2012 (as per pg 27 of the complaint)
9.	Date of allotment letter	09.10.2012
10.	Date of flat buyer's agreement	04.10.2012
11.	Total consideration	Rs.1,00,45,759.57/- (as per account statement cum tax invoice, annexure P/16, pg 105 of the complaint)
12.	Total amount paid by the complainants	Rs. 94,72,801/- (as per account statement cum tax invoice, annexure P/16, pg 110 of the complaint)
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession	30.04.2016 Clause 3.3- 36 months from commencement of construction, i.e. 30.10.2012 (as per demand on commencement of construction, pg 57 of the complaint) + 6 months grace period
15.	Delay of number of months/ years up to 21.01.2019	2 years 8 months



16.	Penalty clause as per flat buyer's agreement dated 04.10.2012	Clause 3.3- Rs. 5/- per sq. ft. per month of super area for the period of delay
-----	---	---

4. The details provided above have been checked on the basis of the record available in the case file. A flat buyer's agreement dated 04.10.2012 is available on record, according to which the possession of the same was to be delivered by 30.04.2016. Neither the respondent has delivered the possession of the said until 30.04.2016 nor they have paid any compensation @ Rs. 5/- per sq. ft. per month of the for the period of such delay as per clause 3.3 of the said agreement. 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 for appearance. The case came up for hearing on 21.01.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.



Facts of the complaint

6. On 19.07.2012, the complainants booked a residential unit in the project named "Green ParC 2" at Crescent ParC, Sector-92, Gurugram by paying an advance amount of Rs 7,50,000/- to the respondent. Accordingly, the complainants were allotted a unit bearing no. P060602, 6th floor, tower P06, block "The Petioles", admeasuring 2093 sq. ft vide allotment letter dated 09.10.2012.
7. The complainants submitted that thereafter, on 04.10.2012, a flat buyer's agreement was executed between the parties. The agreement had many unfair clauses, but the promoter threatened to forfeit their money if the complainants did not sign it, hence the complainants had no option but to sign the agreements. It is to be noted that by this time, the complainants had already paid up Rs.16,73,440/- to the promoter.
8. The complainants submitted that out of the total basic sale consideration, the complainants paid total amount of Rs.94,72,801/- as demanded by the respondent.
9. The complainants submitted that the respondent raised one demand linked to 'on start of plumbing, flooring and tiles



work' at a time when its license had expired. It is submitted that the respondent had no right to raise this demand and it was extremely unfair and patently fraudulent to conceal the lack of valid license from the allottees. The complainants were bonafide allottees and unaware about the absence of a valid license made the necessary payments as demanded by the promoter.

10. The complainants submitted that thereafter, they were shocked when they came to know about the licensing issues. They came to know that both the licenses had expired, namely license no. 44/2009 expired on 13.08.2015 and license no. 68/2011 expired on 20.07.2015. Therefore, when the promoter raised a new demand for VAT in June 2017, the complainants-allottees did not pay it. The said licenses were renewed only in end 2017 and the promoter did not send the demand for VAT again. Also, by that time, the promoter was liable to pay delay compensation, but he did not do so.
11. The complainants submitted that not only the flat is incomplete, but none of the common amenities as promised in the brochure are ready.
12. The complainants further submitted that they sent an email



dated 17.07.2018 for refund with interest to the promoter. But no refund has been received till date. The promoter has responded by saying that it is giving possession of flats in some other project called Green ParC (Phase III). Therefore, the promoter has failed to respond to the demand of the allottees for refund or give any reason for the same. Hence, this complaint.

13. Issues raised by the complainants

The relevant issues as culled out from the complaint are as follows:

- I. Whether the respondent failed to complete the project and has been unable to hand over the possession of the unit in question as per the terms and conditions of the flat buyer's agreement?
- II. Whether the complainants are entitled to refund of the principal amount paid by them along with interest as prescribed under the RERA, 2016 and HARERA rules, 2017 calculated from dates of each payment to promoter till date of actual refund to complainants/allottees?

14. Relief sought

- I. Direct the respondent to refund the amount of



Rs.94,72,801/- due, along with interest as prescribed under the RERA, 2016 and HARERA rules, 2017 calculated from dates of each payment to promoter till date of actual refund to complainants/allottees.

Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainants and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

15. With respect to the **first issue** raised by the complainants, as per clause 3.3 of the flat buyer's agreement dated 04.10.2012, the possession was to be handed over within 36 months from commencement of construction, i.e. 30.10.2012 (as per demand on commencement of construction, pg 57 of the complaint) + 6 months grace period. Accordingly, the due date of delivery of possession comes out to be 30.04.2016. Thus, the respondent has failed in handing over the office space as per the terms and conditions of the buyer's agreement.
16. With respect to **second issue**, the possession of the unit in question was to be handed over by the respondent till 30.04.2016. Complainants have already paid Rs.94,72,801/-



to the respondent against a total sale consideration of Rs. 1,00,45,759/-. The project is registered vide registration no. 270 of 2017 wherein the respondent has undertaken to complete the project by 31.03.2019. Thus, refund cannot be allowed at this stage. However, the complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum.

17. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.

18. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings and directions of the authority

19. **Jurisdiction of the authority-** The project "Green ParC 2" at Crescent ParC is located at Sector-92, Gurugram, thus the authority has complete territorial jurisdiction to entertain 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 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 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.

20. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
21. Such notices were issued to the respondent on 17.09.2018 and on 27.09.2018 and on 29.11.2018. A final notice dated



14.01.2019 by way of e-mail was sent to both the parties to appear before the authority on 21.01.2019.

22. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainants in their pleading.

23. The ex-parte final submissions have been perused at length. As per clause 3.3 of the flat buyer's agreement dated 04.10.2012, the possession was to be handed over 36 months from commencement of construction, i.e. 30.10.2012 (as per demand on commencement of construction, pg 57 of the complaint) + 6 months grace period. Accordingly, the due date of delivery of possession comes out to be 30.04.2016. Thus, the respondent has failed in handing over the apartment as per the terms and conditions of the flat buyer's agreement. As per the statement of account attached in the file, the complainant has paid a sum of Rs. 94,72,801/-. However, the project is registered with the authority and the revised date of completion as per RERA registration certificate is 31.03.2019. In view of the facts and circumstances of the case, the authority is of the considered



opinion that the complainants are entitled to delayed possession charges at prescribed rate of interest @ 10.75% per annum on the amount of Rs. 94,72,801/- from the due date of possession till the revised date of completion, i.e. 31.03.2019, failing which the complainants will be entitled to refund of the amount paid by them.

24. 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 pay delayed possession charges at the prescribed rate of 10.75% per annum to the complainants on the principal sum of Rs. 94,72,801/- paid by them. The interest will be given from due date of possession, i.e. 30.04.2016 till the date of this order, i.e. 21.01.2019 within 90 days from the date of this order and thereafter, monthly payment of interest till 31.03.2019 shall be paid on or before 10th of every subsequent month.

(ii) If the respondent fails in handing over the possession by the committed date, i.e. 31.03.2019, the complainants shall be



entitled to refund of the amount paid by them along with interest.

25. The complaint is disposed of accordingly.

26. The order is pronounced.

27. 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: 21.01.2019

(Subhash Chander Kush)

Member

Judgement Uploaded on 13.02.2019

HARERA
GURUGRAM

