

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 17.01.2019
Complaint No.	569/2018 Case titled as Mr. Deepak Garg V/S Sare Gurugram Private Limited.
Complainant	Mr. Deepak Garg
Represented through	Complainant in person with Shri N.K.Aggarwal Advocate.
Respondent	M/S Sare Gurugram Private Limited.
Respondent Represented through	Shri Rahul Yadav Advocate for the respondent.
Last date of hearing	11.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority vide No.HRERA-454/2017 dated 9.10.2017/1294 and revised date of delivery of possession is 31.3.2019.

Arguments heard.

As per clause 3.3 of the Builder Buyer Agreement dated 14.9.2012 for unit No.P010203, in project "Green ParC 2, Crescent ParC, Sector-92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction i.e. **27.5.2013** + 6 months grace period which comes out to be **27.11.2016**. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.51,89,040/- to the respondent against total sale consideration of Rs.1,00,40,190/-.

Complainant has already moved a letter dated 10.8.2017 asking for refund of the deposited amount alongwith interest. However, the respondent while issuing umpteen number of reminders to the complainant for making balance payment from 2012 till 2017, the complainant did not deposit any balance amount rather defaulted whereas the counsel for the complainant has denied that he has received any letter from the respondent and the respondent too failed to place any copy of reminder sent to the complainant. In the meantime, the complainant made a complaint in CM window and the Principal Secretary, Town and Country Planning directed the respondent not to cancel the allotment and hand over the possession to the complainant on or before 31.3.2018 (prior to coming of RERA). In view of the prevailing situation, the authority is of the considered view that (i) the respondent should not cancel the flat/unit (ii) if the builder as per revised date of delivery of possession failed to deliver possession by 31.3.2019, the buyer/complainant is entitled to seek refund alongwith prescribed rate of interest @ 10.75% per annum w.e.f. **27.11.2016**.

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)
17.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 569 of 2018
Date of first hearing : 18.09.2018
Date of Decision : 17.01.2019

1. Mr. Deepak Garg
R/o WZ-125, SRI Nagar, Flat no.2,
Shakur Basti, new Delhi-110034

Complainant

Versus

2. M/s Sare Gurugram Private Limited
Regd. Office: Crescent ParC, Sector-
92, Patudi Road, Gurugram, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

ORDER

1. A complaint dated 20.07.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Deepak Garg, against the promoters M/s SARE Gurugram Private Ltd. on account of violation of clause 3.3 of the flat buyers' agreement executed on 14.09.2012 for unit no.



P010203 in the project described as below for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 14.09.2012 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, Crescent ParC, Sector 92, Gurugram
2.	Flat no.	P010203
3.	RERA registered/ not registered.	Registered
4.	RERA Registration no.	270/2017 dated 09.10.2017
5.	Revised date of possession	31.03.2019
6.	Area of admeasuring	206.80 sq.mt/2226 sq.ft.
7.	DTCP License no.	44 of 2009 dated 14.08.2009
8.	Date of execution of flat buyer's agreement	14.09.2012
9.	Total consideration amount as per Annexure A of flat buyer agreement , page 37	Rs. 1,00,40,190/-
10.	Total amount paid by the	Rs 51,89,040/-



	complainant upto date	
11.	Date of delivery of possession. (Clause 3.3-36 months from the date of commencement of construction+ 6 months grace period)	27.11.2016 Date of construction- 27.05.2013
12.	Delay of number of months/ years	2 years 1 month 21 days
13.	Penalty Clause as per flat buyer agreement	Clause 3.3, Rs 5/ sq. ft per month
14.	Cause of delay in delivery of possession	No valid reason

3. As per the details provided above, which have been checked as per record of the case file, a flat buyer agreement is available on record for unit no. P010203, admeasuring 2226 sq. ft. super area, according to which the possession of the aforesaid unit was to be delivered by 27.11.2016. The promoter has failed to deliver the possession of the said unit to the complainant by the due date nor has paid any compensation i.e. @ Rs. 5 per sq. ft of the super area of the said unit per month for the period of the such delay as per clause 3.3 of the flat buyer agreement dated 14.09.2012. 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 through his counsel



on 18.09.2018. The case came up for hearing on 18.09.2018,11.12.2018 and 17.01.2019.

FACTS

5. Briefly stating the facts of the complaint, the complainant booked a residential unit bearing no. o010203, building No.. P01, 9th Floor, block P03, “The Petioles”, Green ParC, Sector 92, Gurgaon, Haryana in the project “Crescent ParC”.
6. That a flat buyer agreement was executed between the parties on 14.09.2012 for a sale consideration for Rs. 1,00,40,190/- out of which the complainant made a total payment of Rs. 82,25,070/-.
7. The company proposed to offer possession of the said flat within a period of 36 months + 6 months from the date of commencement of construction. The respondents have failed to deliver the possession till date nor has refunded the amount to the complainant even after the complainant has tried approaching them on numerous occasions. The representatives of the respondent company assured him that the company will refund the amount by 27.11.2014. Instead of refund the amount, an undated and untitled letter was delivered on the complainant on 25.05.2017 thereby stating that the allotment of flat no. P010203 had been cancelled and



it is pertinent to mention that the alleged final notice dated 28.03.2017 has never been served upon the complainant. The respondent company has also not replied to the legal notice issued by the complainant. Hence, the complainant has filed the present complaint.

ISSUES RAISED BY THE COMPLAINANT:

- I. Whether the complainant is entitled for refund of Rs. 51,89,040/-, interest and compensation?

RELIEF SOUGHT:

- I. Direct the respondent to refund the amount of Rs.51,89,040/- along with interest @18% p.a. from the date of each individual payment till date.

RESPONDENT'S REPLY

8. The respondent stated that the present complaint is not maintainable in law or facts. Under the scheme of the Real Estate (Regulation and Development) Act, 2016, complaints under section 31 of the Act can only be filed with regard to non-compliance or violation of the provisions of the Act. The provisions of the Act are not applicable to the project in question in as much as the construction of the project already stands completed and the respondent has already made an application for issuance of the occupation certificate before



the competent authority. The project is not an “ongoing project” as defined under the rules and hence does not require registration. The provisions of the Act and rules are not applicable to the project in question, the present complaint is not maintainable in law and the same is liable to be dismissed. The occupation certificate has been issued in respect of the project in question by the competent authority vide memo 21347 dated 20.07.2018.

9. The locus standi or cause of action to institute the present complaint. The complaint is purportedly filed on behalf of an association of flat allottees of the project “Privy the Address”, sector-93, Gurgaon.
10. The respondent submitted that section 31 of the Act contemplates filing of the complaint by “the association of allottees or any voluntary consumer association registered under any law for the time being in force”.
11. The respondent submitted that since the super area and rate differ for each allottee, it is not possible to quantify the relief sought. It is further admitted that the so called “sample case” of Mrs. Vibha Narula Gupta is not a subvention case, hence amounts to be determined for other cases which might be subvention cases.



Determination of issues

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

12. In regard to the **first issue** raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date i.e 27.11.2016 as per the agreement, thus, 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.
13. The complainant 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.”

14. 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:



“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

15. The respondent admitted the fact that the project Green ParC is situated in sector-92, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

16. **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.

17. The complainant already moved a letter dated 10.08.2017 asking for refund of the deposited amount along with interest. However, the respondent while issuing umpteen number of reminders to the complainant for making balance payment from 2012 till 2017., the complainant did not deposit any balance amount rather defaulted whereas the counsel for complainant has denied that he has received any letter from the respondent and the respondent too failed to place any copy of reminders sent to the complainant. The complainant made a complaint in CM window and the Principal secretary, Town and Country Planning directed the respondent not to cancel the allotment and hand over the possession to the complainant on or before 31.03.2018 (prior to coming of RERA).

Decision and directions of the authority

17. 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 not to cancel the flat and if the builder as per the revised date of delivery of



possession failed to deliver possession by 31.03.2019, then the complainant is entitled to seek refund along with rate of interest @10.75% per annum w.e.f. 27.11.201.

(ii) The arrears of interest so far shall be paid to the complainant within 90 days from the date of the order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

18. The complaint is disposed of accordingly.
19. The order is pronounced.
20. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Haryana Real Estate Regulatory Authority, Gurugram

Judgement uploaded on 11.03.2019