

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

Complaint No. : 1958 of 2018
Date of First Hearing: 13.03.2019
Date of Decision : 13.03.2019

Mr. Harjit Makkar
Mrs. Harjot Kaur
R/o H.no. 173/9 Cheema Colony, Bassi **Complainants**
Pathanam, Fateh Garh Sahib, Punjab

Versus

M/s Ramprashtha Promoters and Developers
Pvt. Ltd.
Corporate Office: 114, Sector-44, Gurugram,
Haryana-122002 **Respondent**

CORAM:

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

APPEARANCE:

Shri Sushil Yadav with Advocate for the complainant
Complainant in person
Shri Dheeraj Kapoor Advocate for the respondent



ORDER

1. A complaint dated 26.11.2018 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 Mr. Harjit

Makkar and Mrs. Harjot Kaur, 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 17.10.2012, in respect of unit bearing no. 201, 2nd floor, tower B, block C 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 apartment buyer's agreement dated 17.10.2012 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.	DTCP license no.	33 of 2008
3.	Unit no.	201, 2 nd floor, tower C
4.	Project area	60.5112 acres
5.	Registered/ not registered	Registered



6.	RERA Registration no.	278 of 2017
7.	Revised date of delivery of possession as per RERA registration	30.06.2019
8.	Nature of the project	Group housing colony
9.	Payment Plan	Instalment linked Payment Plan
10.	Area of the flat/apartment	1825 sq. ft.
11.	Date of apartment buyer agreement	17.10.2012
12.	Date of booking	07.12.2011
13.	Total consideration amount	Rs. 86,34,219/- (annx II)
14.	Total amount paid by the complainant	Rs. 71,79,409/- (as alleged by complainants)
15.	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
16.	Delay for number of months/ years	3 years 1 months
17.	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
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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 complainants and the respondent. A apartment buyer agreement dated 17.10.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 31.01.2016 . 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 17.10.2012.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The matter came up for hearing on 13.03.2019. Reply has been filed by the respondent and the same has been perused.



Facts of the complaint

6. The complainants submitted that they booked an apartment/flat admeasuring 1825 sq. ft. in aforesaid project of the respondent for total sale consideration of Rs.

86,34,219/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.

7. The complainant made payment of Rs.71,79,409/- to the respondent vide different cheques on different dates, the details of which are as annexed.
8. The complainants submitted that as per apartment buyer's agreement the respondent had allotted a unit/flat bearing no. 201 in tower- C having super area of 1825 sq. ft. to the complainant. That as per para no.15(a) of the apartment buyer agreement, the respondent had agreed to deliver the possession of the flat latest by September 2015 as per the date of signing of the apartment buyers agreement dated 17.10.2012 with an extended period of 120 days.
9. The complainants submitted that they regularly visited the site but were surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the tower without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving of 85-90% approximately payment of all



the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.

10. The complainants submitted that it could be seen that the construction of the tower in which the complainant flat was booked with a promise by the respondent to deliver the flat by September 2015 but was not completed within time for the reasons best known to the respondent which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

11. The complainants submitted that due to this omission on the part of the respondent the complainants has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the Flat on time. That as per clause 17 (a) of the apartment buyer agreement dated 17.10.2012 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the apartment/flat. It is however, pertinent to



mention here that a clause of compensation at a such of nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @1% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

12. The complainants submitted that on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant @18% per annum to be compounded from the promise date of possession till the flat is actually delivered to the complainant.

13. The complainants submitted that the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent



either to deliver possession of the flat in question or to refund the amount along with interest @ 18% per annum on the amount deposited by the complainant, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants of their hard-earned money and caused wrongful gain to himself and caused wrongful loss to the complainants.

Issues raised by the complainants

- I. Whether the clause in the agreement are one sided and arbitrary?
- II. Whether there is delay on the part of respondent in which is unjustified as per the terms of agreement?

Relief sought

- I. Direct the respondent to refund the amount of Rs. 71,79,409/- paid by the complainants to the respondent along with prescribed rate of interest .

Respondent's reply

14. 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.

15. 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.



16. 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.

17. 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 are only speculative investor and are not interested in taking over the possession.

18. 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.

19. The respondent submitted that in the humble submission of the respondent, this hon'ble regulatory authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainant/allotment offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act



or said rules, has been executed between the complainant and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 17.10.2012, executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of said act, has to be in reference to the agreement for sale executed in terms of said act and said rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of the said Act and the said rules. Thus, in view of the submissions made above, no relief can be granted to the complainant.

20. The respondent submitted that no cause of action has ever accrued in favour of the complainant to file the present complaint before this hon'ble regulatory authority. The complaint being without any cause of action is liable to be dismissed at this ground alone.

21. The respondent submitted that (a) till date, the complainant kept on making payment as per the payment plan, though not within the time prescribed, which resulted in delay payment charges/interest; and (b) that from the date of booking till the



filing of the present complaint, the complainant never raised any issue whatsoever, clearly reveals that the complainant had no issue or concern about the terms and conditions of the said apartment buyer's agreement and is now unnecessarily raising false and frivolous issues and has filed the present complaint.

22. The respondent submitted that the it humbly submits before this hon'ble regulatory authority that the respondent has developed various projects and has completed those projects. The respondent has obtained occupancy certificate in majority of its projects. The below table shows the project name, its size and the current status of the project.

Determination of issues

23. In respect of the **first** and **second issue** raised by the complainants, as per clause 15(a) of the apartment buyer's agreement dated 17.10.2012, 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. 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 offer of possession. So, he has breached the terms of agreement and as per clause 17(a) the delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area of the said flat 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.”

So, the complainants are entitled to delayed possession interest at the prescribed rate of 10.75% p.a. from the due date of possession till the date of offer of possession.

Findings of the authority

24. 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.

25. **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.

26. 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 17.10.2012 for unit No.201, tower-B, block-C, in project "Rise" Sector-37-D, Gurugram, possession was to be handed over to the complainant by September 2015 + 120 days as grace period which comes out to be 31.1.2016. However, the respondent has not delivered the unit in time. Complainant has already



paid Rs.71,79,409/- to the respondent against a total sale consideration of Rs.86,34,219/-.

Decision and directions of the authority

27. 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 complainants are 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.
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 10th of subsequent month.
3. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

29. The order is pronounced.



30. Case file be consigned to the registry

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 30.01.2019

Judgement uploaded on 28.03.2019



HARERA
GURUGRAM

