

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

Complaint no. : 4215 of 2020
First date of hearing: 17.12.2020
Date of decision : 17.11.2021

Manoj Kumar
RR/o: - Village- Mohan Bari,
PO- Jhanswa, District Jhajjar

Complainant

Versus

Army Welfare Housing Organization
South Hutment, Rajaji Marg,
Kashmir House, New Delhi-110011

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri M.L Yadav & Om Prakash Advocates for the complainant
Yadav

Shri Neeraj Deshwal Advocate for the respondent

ORDER

1. The present complaint dated 24.11.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that

the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Shanti Vihar", Tower A to R, Sector 95, Gurugram.
2.	Project area	24.53 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	40 of 2010 dated 28.05.2010
	Valid up to	27.05.2025
5.	Name of licensee	Ramprastha Infratech Pvt. Ltd. and Others
6.	HRERA registered/ not registered	Registered vide registration no. 08 of 2018 dated 04.01.2018
	Valid up to	31.12.2020
7.	Allotment of registration no.	17.10.2011 [As per page 17 of reply]
8.	Allotment letter dated	04.11.2019 [after draw of lots as per brochure]



9.	Unit no.	1803, 18 th floor, block K [As per page 54 of reply]
10.	Undertaking for change of unit dated 01.12.2020 by complainant	1602, 16 th floor, block K [duly allotted by respondent on 27.01.2020 on page 57]
11.	Unit measuring	Not provided [Type- Deluxe Apartment]
12.	Date of execution of buyer's agreement	Not executed [Rather a booking letter dated 19.03.2012 is attached containing terms and conditions]
13.	Payment plan	Time linked payment plan [As per page 10 of complaint]
14.	Total consideration as per booking letter dated 19.03.2012	Rs. 46,20,000/- [excluding car parking] [As per page 09 of complaint]
15.	Revised consideration as per reminder letter dated 08.04.2019.	Rs. 50,31,830/- [Including car parking, school construction and power supply] [As per page 44 of reply]
16.	Total amount paid by the complainant as per statement of account dated 06.01.2020	Rs. 50,55,938/- [As per page 21 of complaint]
17.	Due date of delivery of possession as per clause 8 of the booking letter	Dec 2015 [As per page 21 of reply]
18.	Revised due date of delivery of possession as per clause 1 of the letter dated 07.08.2018	Dec 2019 [As per page 41 of reply] [Nowhere signed by the complainant]
19.	Revised due date of delivery of possession of new allotted unit	April 2021
20.	Occupation certificate	18.12.2020

21.	Offer of possession	03.03.2021
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B. Facts of the complaint

3. The complainant applied for a dwelling unit (hereinafter, "DU") in group housing project of Army Welfare Housing Organisation (hereinafter, "AWHO") Turnkey, Sector- 95 Gurugram, Haryana. The respondent vide its letter 19.03.2012 booked a DU in its deluxe apartment category on the terms and conditions defined in the booking letter and the tentative cost of the DU was fixed as Rs. 46,20,000/-.
4. That the complainant paid various amounts towards consideration of booked DU and a total payment of Rs. 5055938/- i.e. 95% of the total cost of the DU and other charges were paid till date. Whereas rest of the amount was payable at the time of possession. The complainant has abided by all the terms and conditions of the booking letter of DU.
5. That the complainant took a loan from HDFC Ltd to partly finance the cost of the DU. Due to such delay in handing over possession, the complainant has suffered losses.
6. That the respondent vide letter dt. 27.8.2019 informed that the project is near completion and is likely to be ready for handing over by January,2020 and vide letter dt. 4.11.2019 complainant was informed that flat no 1803 on 18th Floor in deluxe apartment has been allotted to him.

7. That as per para 8 of the letter of booking, DU was expected to be ready for handing over by December 2015. Till date complainant has not received the possession of the DU. The delay as on the date of filling of complainant is more than 4 years. When the complainant visited the project to know the status of the project and it was shocking to see that the construction was not going on as per schedule.
8. The complainant submitted that the matter regarding which this complaint had been made is not pending before any court of law or other authority or any other Tribunal and the subject matter of the claim falls within the jurisdiction of the Real Estate Regulatory Authority, Gurugram.
- C. Relief sought by the complainant:**
9. The complainant has sought following relief(s):
- (i) Direct the respondent to handover the possession of the dwelling unit no. 18FL/ 1803 in deluxe apartment of project in habitable condition with time bound manner.
- (ii) Direct the respondent to pay interest for the delayed period, from January 2016 till the date of possession at rate prescribed under RERA on the amount paid by the complainant.
- (iii) Direct the respondent to pay cost of litigation for a sum of Rs.50,000/-.

10. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.

- i. That the Army Welfare Housing Organisation (AWHO)/respondent herein after referred to as 'the respondent society' is a society registered with the Registrar of Societies, Delhi under the Societies Registration Act XXI of 1860, having its registered office located at South Hutments, Kashmir House, Rajaji Marg New Delhi 110011 and the object of the respondent society is to provide dwelling units to serving and retired army personnel as well as their widows, all over India, on "No Profit and No Loss Basis". The respondent society develops, as a welfare measure, all its group housing projects from the contributions made by the allottees apart from the short-term borrowings from the financial institutions like Banks, HUDCO and National Housing Bank and it gets no grants either from Central Government or Army Head Quarters for managing its welfare activities.

- ii. That the 'Executive Committee' of the respondent society is charged with carrying out the day-to-day welfare activities and it also assists respondent's board of governors and board of management comprising of an ex-officio president who is chief of army staff and ex-officio chairman, who is the adjutant general, army headquarters. Managing Director of the respondent society is assisted by a team of executives who are specialists in their own faculties, planners, architects, engineers, surveyors, project managers and the necessary staff. Respondent society is the only organisation in India which 'refunds prorate' to its allottees, any sum, if found surplus upon closure of the project accounts.
- iii. That the complainant has filed a speculative, malafide, frivolous and vexatious complaint against the respondent society, based on false facts and grounds, apart from concealing vital and material facts and documents, and therefore, the same deserves to be dismissed with exemplary cost.
- iv. That the complainant, vide an application dated 06.08.2011 has applied for a deluxe apartment (herein referred as, DXA) in a group housing scheme at Sector 95, Gurugram developed by the respondent society forming part of the master brochure containing the terms and conditions of allotment of the unit.

- v. That the respondent society vide its letter dated 17.10.2011 issued a letter registering in favour of the complainant, confirming the registration of the DXA in favour of the complainant. The group housing project was to have 1221 dwelling units apart from other amenities as per the building bye laws.
- vi. That the respondent society issued in favour of the complainant, a booking letter dated 19.03.2012 for a deluxe apartment (DXA) and informing the status of the proposed project. The complainant unconditionally accepted the terms of allotment contained in the master brochure and the booking letter issued by the respondent society.
- vii. That as per the said booking letter, approximate and pre-assessed tentative cost of the DXA allotted to the complainant was Rs.46,20,000/- and the complainant was given liberty to withdraw from the group housing scheme, subject to the provisions of para 47 of the respondent society's master brochure. It is stated that the aforesaid amount did not include the cost of car parking and other charges as per the rules of allotment of the respondent society, as made explicit in the aforesaid booking letter. It is stated that as per the booking letter, the cost of the dwelling was tentative and further the 'probable date of completion' was December 2015 which too was tentative. The complainant was also informed that

payment schedule could be revised based on the progress of construction or for any other reasons. The complainant was also liable to pay the escalation of the cost. All these terms were accepted by the complainant without any objection or protest vide a letter dated 11.05.2012 unconditionally accepted the terms and conditions set out in the booking letter.

- viii. That by keeping in view the progress of construction of the project by the contractor, respondent society vide a letter dated 10.07.2013, conveyed to all the allottees including the complainant that the payment of the 4th instalment has been rescheduled to 25.10.2013 instead of 08.08.2013 and 5th instalment has been rescheduled to 27.02.2014 instead of 11.11.2013, thus granting financial relief to the allottees and the complainant accepted the change in the payment plan without any protest.
- ix. That the respondent society vide a letter dated 27.01.2014, conveyed to all the allottees including the complainant that the payment of the 5th installment has been rescheduled to 03.06.2014 instead of 27.02.2014 and 6th instalment has been rescheduled to 04.09.2014 instead of 09.06.2014. Further, respondent society vide a letter dated 02.07.2014, conveyed to the complainant that the payment of the 6th installment has been rescheduled to 08.01.2015 instead of 04.09.2014.

- x. That the respondent society vide a letter dated 05.12.2014, conveyed to all the allottees that the payment of the 6th installment has been rescheduled to 06.06.2015 instead of 08.01.2015 and vide a letter dated 08.04.2015, conveyed to all the allottees that the payment of the 6th installment has been rescheduled to 07.12.2015 instead of 06.06.2015, thus granting financial relief to the allottees.
- xi. That the respondent society vide a letter dated 29.06.2015, conveyed to all the allottees including the complainant that in views of the HUDA norms the housing complex will require to have one primary and two nursery school and therefor the complainant shall have to pay Rs. 1.49 lakhs as additional cost towards his dwelling unit and the same was accepted by the complainant without any protest. Keeping in view the progress of construction of the project by the contractor, respondent society vide a letter dated 26.10.2015, conveyed to the complainant that the payment of the 6th installment has been rescheduled to 04.03.2016 instead of 07.12.2015. Further, vide a letter dated 14.01.2016, it was conveyed to all the allottees that the payment of the 6th installment has been rescheduled to 15.06.2016 instead of 04.03.2016.
- xii. That in view of the progress of construction of the project by the contractor, respondent society vide a letter dated 17.05.2016, conveyed to the complainant that the payment of the 6th

- installment has been rescheduled to 30.11.2016 instead of 15.06.2016, thus granting financial relief to the allottees and vide letter dated 10.06.2016, it was conveyed to all the allottees that due to inadequate resources infusion by the contractor progress of the work is slow.
- xiii. That vide a letter dated 08.12.2016, it was conveyed to all the allottees including the complainant that in view of the enhancement of the backup power supply the complainant was liable to pay additional Rs.30,000/- towards the cost of the flat and the complainant accepted the payment of additional cost without any protest.
- xiv. That vide a letter dated 11.05.2018, it was conveyed to all the allottees that the contract of M/s Ramprastha Promoters and Developers Pvt. Ltd. had been terminated on 05.01.2018 and the time lines of the progress/ completion of the project shall be hosted on the web site of the respondent society. Allottees including the complainant were given the option to withdraw from the scheme as per the rules of allotment.
- xv. That the respondent society vide a detailed letter dated 07.08.2018, conveyed to all the allottees including the complainant that in view of the fresh contract awarded to a new agency there was an escalation of cost of the dwelling units by 08% and that

- the proposed date of completion was December 2019. The complainant accepted the change in the escalated cost of the dwelling unit, car parking and the new proposed date of completion of the project without any protest.
- xvi. That the respondent society vide a detailed letter dated 04.10.2018 and 16.10.2018 conveyed and shared with all the allottees including the complainant its concern and sympathy with the allottees relating to the escalation of cost and further development of the project. Respondent conveyed it's steps in initiating legal action against the original contractor who failed to complete the project in time and all the allottees were requested to make the payment of the balance cost of the dwelling units in time.
- xvii. That vide letters dated 17.12.2018 and 08.04.2019, the balance cost of the dwelling unit was demanded form the complainant. Further all the allottees vide a letter dated 17.06.2019 were requested to make the payment of the balance cost of the dwelling units in time.
- xviii. That in respond of letter dated 27.08.2019, the complainant through letter dated 28.09.2019, voluntarily gave his option for the floor and the car parking without any protest.
- xix. That in pursuant to a draw of lot held on 24.10.2019, the complainant was allotted DXA DU No. K-1803, on the 18th floor in

- block-K and basement car parking no. K-CP B-1131 and the same was duly conveyed by letter dated 04.11.2019.
- xx. That the complainant vide an undertaking dated 01.12.2020 sought a change/exchange of his unit, from DXA DU no. K-1830 on the 18th floor to K-1602 on the 16th floor and undertook not to make any claim relating to the allotment of DXA DU no. K-1830.
- xxi. That the respondent informed the complainant by its letter dated 27.01.2021 allotted to the complainant deluxe apartment no. K-1602 on 16th floor and a car parking no. CPB-B1042 and also informed that allotment of DXA DU no .K-1830 on 18th floor stood cancelled and was directed to return the original booking letter issued by the respondent for DXA DU no. K-1830 on 18th floor.
- xxii. That subject to the complainant complying with other mandatory compliances as per the terms of allotment, the issuance of a fresh booking letter for a new apartment amounts to contract of fresh allotment of deluxe apartment no. K-1602 on 16th floor and a car parking no. CPB-B1042. It is further submitted that upon complying with the requirements of the respondent, the complainant shall then be issued handing/ taking over instructions of the dwelling unit and car parking allotted to him, whereinafter he shall be handed over the physical possession of the dwelling unit and car parking allotted to him. It is further submitted that block wise

- handing over of the dwelling units and car parking commenced with effect from 01.10.2020. However, the handing over of the dwelling units in tower(s)/ block(s) 'K' in the group housing project shall commence with effect from 01 April 2021. It is therefore submitted that the dwelling unit and car parking allotted to the complainant shall be handed over to him on or after 01.04.2021 subject to the complainant complying with the terms of allotment.
- xxiii. That the bonafide and unavoidable delay and escalation of modest amount of cost of the dwelling unit was neither opposed by the complainant nor did he withdrew from the project, thereby accepting the bonafide delay in handing over the possession of the DU as well as the car parking area and increase of the dwelling unit. Moreover, with a fresh contract of allotment being made to the complainant on 27.01.2021, there is no delay in the allotment of fresh deluxe apartment to the complainant. That being a malafide and speculative complaint the same deserves to be dismissed with exemplary costs.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

15. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant

Relief sought by the complainant:

F.I Direct the respondent to handover the possession of the dwelling unit no. 18FL/ 1803 in deluxe apartment of project in habitable condition with time bound manner.

16. In the present case, the complainant itself made an application on 01.12.2020 for exchange of unit as per page 56 of reply. The occupation certificate has been obtained on 18.12.2020 and an offer of possession of changed unit was made on 03.03.2021. The complainant is directed to take the possession of the dwelling unit within 2 months of order.

F.II Direct the respondent to pay cost of litigation for a sum of Rs.50,000/-.

17. The complainant is claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate

entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules

F.III Direct the respondent to pay interest for the delayed period, from January 2016 till the date of possession at rate prescribed under RERA on the amount paid by the complainant.

18. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

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."

19. Clause 8 of the flat buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"8.

The dwelling unit is to be handed over by December 2015."

20. The authority has gone through the possession clause of the agreement and observed that this is a matter very rare in nature

where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of flat buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession.

21. **Admissibility of delay possession charges at prescribed rate of interest:** It is not disputed that the complainant was allotted unit number 1803, K-18 and later on changed to 1602/K-16 vide letters of allotment dated 14.11.2019 and 27.01.2020 respectively for a total sale consideration of Rs.46,20,000/-. That was later on changed to Rs.50,31,830/- on 08.04.2019 by the respondent-society. Though no builder buyer agreement has been executed between the parties, but the terms and conditions of allotment have been retained in letter of booking dated 19.03.2021. It is an admitted fact that the complainant has paid a total sum of Rs.50,55,933/- against the total sale consideration. Earlier the due date of handing over of allotted unit was fixed as December 2015 but the same was revised as per clause 1 of letter dated 07.08.2018, as December, 2019. It is also a fact that from time to time the payment schedule to be paid by the allottees including the

complainant were changed keeping in view the schedule of construction and summarized as under-

S.no	Installment	Original due date	Revised due date
1	4 th installment	08.08.2013	25.10.2013
2	5 th installment	11.11.2013	27.02.2014
3		27.02.2014	03.06.2014
4	6 th installment	09.06.2014	04.09.2014
5		04.09.2014	08.01.2015
6		08.01.2015	07.12.2015
7		07.12.2015	04.03.2016
8		04.03.2016	15.06.2016
9		15.06.2016	30.11.2016

22. It is also fact that after termination of contract of M/s Ramprastha Infratech Pvt. Ltd. with regards to construction of dwelling unit. The complainant was given an option vide letter dated 11.05.2018 to withdraw from project. Even on request made by complainant the allotment of the earlier unit was changed, and he was promised to be offered possession of change unit in April, 2021. Now in the circumstances detailed above, it is to be seen whether the

complainant is entitled for delayed possession charges against the allotted unit.

23. The respondent society was formed for providing DU to the serving/ retired personals as well as their widows all over India with no profit no loss basis. It is registered under The Societies Registration Act,1860 and gets no grants either from the Central Government or the army headquarters for managing its welfare activities. The project namely "Shanti Vihar" consisting of tower A to R was plotted by the respondent for providing DUs to serving/retired army personals as well as their widows all over India. In pursuant to request made by the complainant he was allotted a unit detailed above by the respondent society vide its letter dated 19.03.2011. Though the project was to be completed by December, 2015 and the possession of the allotted unit was to be delivered after that. But that's schedule could not be adhered to, for the one reason or the other and resulting in rescheduling of payments to be received from the allottees from time to time as detailed earlier. Even the allottees including the complainant was duly informed about the same and no objection at any point of time was raised with regards to rescheduling of payment schedule and time to complete the project. Also, it is pertinent to mention here that after filing of complaint with this authority on 24.11.2020, the

complainant vide letter dated 01.12.2020 has applied for upgradation of unit from K-1803 to K-1602 and exercised his option to avail specific floor and parking space. Even after filing of aforesaid complaint with the authority, he never raised any objection against the respondent society. The action of complainant makes it crystal clear that he wants to continue with the project.

24. Lastly, the complainant was also given an option in between to withdraw from the project due to delay in completion of project, change of contractor and escalation in cost of the unit. However, neither any objection to the same was raised nor the complainant opted out of the project. The occupation certificate of the project was received on 18.12.2020 from Directorate of Town and Country Planning, Chandigarh and in pursuant to which the respondent society started offering possession of the allotted units to different allottees. Moreover, AWHO is itself, a group of retired army personnel who came together to develop a project on behalf of and for other army personnel's and their families or widows. The funds on behalf of others were collected to develop the project and in accordance to this only, the master brochure was drafted, allowing any delayed interest will be a harm to the common property of the AWHO violating section 8 of The Societies Registration Act, 1860.

The same is reproduced as under:

8. Enforcement of judgment against society. —If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

25. When the aim of respondent society is to provide DU on no profit no loss basis to the serving or retired army personals as well as their windows then the complainant being an allottee can't claim delayed possession charges. Moreover, from time to time, he agreed for extensions in completion of the project and change of DU as detailed earlier then no case intentional delay in completion of the project and DPC is made out.
26. As mentioned earlier the occupation certificate of the project has already been received on 18.12.2020 and according to which respondent society has offered possession of unit different allottees including the complainant on 03.03.2021. The complainant after change of unit should surrender the original documents of the previous unit and take possession of the allotted unit to him within 2 months of the passing of this order, that was not done.
27. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that no contravention has been proved against the respondent-society. As per terms and conditions of the brochure and allotment letter, the

due date of handing over possession was April 2021 and respondent-society offered the possession of the concerned unit i.e.; K-1602 on 03.03.2021 i.e. before the due date of possession.


G. Directions of the authority

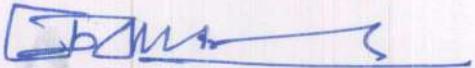
28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The complainant is directed to take the possession of the allotted unit(K-1602) within 2 months of date of order.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.11.2021