

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

Complaint no. : 1545 of 2018
First date of hearing : 10.04.2018
Date of decision : 10.04.2018

1. Mr. Ajay Kumar Gupta
2. Mrs. Shalini Gupta
Both R/o Flat no. NGE 173,
DLF New Town Heights,
Sector 90,
Gurugram-122505
Haryana

Complainant

Versus

M/s Ramprastha Sare Realty Pvt. Ltd.
Address: E-7/12, LGF, Malviya Nagar,
New Delhi-110017

Respondent

CORAM:

Shri Subhash Chander Kush
Shri Samir Kumar

**Member
Member**

APPEARANCE:

Shri Ajay Kumar Gupta and Shalini Gupta Complainants in person
None for respondent Advocate for the respondent

EX-PARTE ORDER

1. A complaint dated 15.11.2018 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. Ajay Gupta and Mrs. Shalini Gupta against M/s Ramprastha Sare

Realty Pvt. Ltd, on account of violation of the clause 3.3 of flat buyer's agreement executed on 29.08.2012 in respect of unit described below for not handing over possession by 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 29.08.2012 i.e. prior to the commencement of the Act *ibid*, so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations 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	"GreenParC 2", Crescent ParC ,Sector 92, Gurugram, Haryana.
2.	Nature of the project	Residential colony
3.	Project area	48.818 acres
4.	Registered/not registered	Registered 270 of 2017
5.	Revised date of completion of project as per RERA registration	31.03.2019
6.	DTCP license no.	44 of 2009 dated 14.08.2009 and 68 of

		2011 dated 21.07.2011
7.	License holder	M/s Ramprastha sare Pvt. Ltd.
8.	Date of execution of flat buyer's agreement	29.08.2012
9.	Date of commencement of construction	10.01.2013
10.	Office space/unit no. as per the said agreement	T15-1405,T15, 14 th floor
11.	Unit admeasuring	1261.00 sq. ft.
12.	Payment plan	Construction linked plan
13.	Total consideration amount /-(as per account statement dated 24.10.2018 as annexure I)	Rs.57,64,976.24
14.	Total amount paid by the complainant till date (as per account statement dated 24.10.2018 at annexure 1)	Rs.55,71,585/-
15.	Due date of delivery of possession as per clause 3.3 of flat buyer's agreement i.e. 36 months from the date of commencement of construction and subject to timely payment by allottee + 6 months grace period	10.07.2016
16.	Delay till the date of decision	2 years and 9 months
17.	Penalty clause 3.3 as per flat buyer's agreement	Rs.5 per sq. ft. per month of super area

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A flat buyer's agreement dated 29.08.2012 is available on record for the

aforesaid unit. As per clause 3.3 of the flat buyer's agreement dated 29.08.2012, the due date of handing over possession was 10.07.2016. The respondent has neither deliver the possession of the said unit nor paid any interest for the period he delayed in handing over the possession. Therefore, the promoter has not fulfilled its 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 10.04.2019. 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.

Brief facts

6. The complainant submitted that they bought unit no. T15-1405 in resale from first buyer in September, 2013 for Rs. 60,37,841/- (including a premium of Rs 3,53,080/- and service tax of Rs 1,70,321/-). Majority of this amount was

paid directly to SARE after the transfer. SARE transferred the flat in their name on 10.10.2013.

7. The complainants submitted that they were allotted to first buyer on 17.04.2012 under project Green Pare 2; phase 4 at Crescent ParC, Sector 92, Gurugram, Haryana. Total cost at the time of original booking was Rs.55,14,000/- excluding taxes.
8. The complainants alleged that total amount of Rs 55,71,585/- has been paid to the builder till now in various installments till Feb 2016 which comes out to be 95% of total cost of the project. A premium of Rs 3,53,080/ was also paid to the first buyer by the complainants at the time of transfer of said unit.
9. The complainants submitted that as per the flat buyer's agreement, for any delayed payment, 18% per annum was charged/ likely to be charged by SARE. They mentioned in the flat buyer's agreement, they will offer possession within 36 months from 10.01.2013, the possession date calculated was 10.01.2016. It comes 10.07.2016 when a grace period of 6 months is considered.

10. The complainants alleged that the project is RERA registered with No 270 of 2017 dated 09.10.2017 as confirmed by SARE over mail. The builder changed its bank account and company's name also. It appears to be motivated with some legal and criminal intent to become defaulter. The new name of the company is Sare Gurugram Private Limited.
11. The complainants submitted that recently on 19.09.2018, for the same project, a judgement has been declared with respect to complaint number 287/ 2018 (Case titled as Mr. Girish Goswami V/S M/S Ramprastha Sare Realty Pvt. Ltd.) by the authority. Facts and figures of this complaint is quite similar to the present complaint.

Issue to be decided

- i. Whether the respondent is liable to pay delayed possession charges along with interest on deposited amount as per section 18 of the RERA act?

Relief sought by the complainants

Direct the respondent to pay interest on the deposited amount along with interest.

Determination of issue

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

12. With respect to **sole issue** raised by the complainants, as per clause 3.3 of the flat buyer's agreement, the possession of the said unit was to be handed over within 36 months from the date of commencement of construction i.e. 10.01.2013 plus 6 months additional period. Additional period of 6 months is given to the respondent to exigencies beyond the control of the respondent. Therefore, the due date shall be computed from 10.01.2013. The relevant clause is reproduced as under:

"3.3. The company shall endeavour to offer possession of the said flat within a period of thirty six (36) months from the date of commencement of construction and subject to timely payment by the allottees towards the basic sale price and other charges. The company shall be entitled to six months additional period in the event there is a delay in handing over possession"

Therefore, the due date of possession comes out to be 10.07.2016 and the possession has been delayed by **2 years and 9 months** till the date of decision. Therefore, under

section 18(1) proviso respondent is liable to pay interest to the complainants, at 10.75%, for every month of delay till the handing over of possession.

Findings of the authority

13. The authority has complete jurisdiction to decide the complaint in regard to 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 complainant at a later stage.
14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

15. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
16. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.
17. Complaint was filed on 15.11.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 16.11.2018, 30.11.2018 and 19.12.2018. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainants in his complaint.

18. A final notice dated 20.3.2019 by way of email was sent to both the parties to appear before the authority on 10.04.2019.

19. As per clause 3.3 of the flat buyer's agreement dated 29.8.2012 for unit No.T15-1415, in project "Green ParC2" Crescent ParC, Sector-92, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of commencement of construction + 6 months grace period which comes out to be 10.07.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs. 55,71,585/- to the respondent against a total sale consideration of Rs.57,64,976/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 10.07.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Directions of the authority

20. After taking into consideration all the material facts as adduced and produced by the complainant, 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 parties in the interest of justice and fair play:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 10.07.2016 till the offer of the possession by the respondent.
- ii. The respondent is directed to pay interest accrued from the due date possession i.e. 10.07.2016 till the date of offer of possession by the respondent on account of delay in handing over of possession to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not part of the flat buyer's agreement.

v. The respondent is directed that interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

21. The order is pronounced.

22. Case file be consigned to the registry.

Samir Kumar
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.04.2019

Judgement uploaded on 25.04.2019

HARERA
GURUGRAM