

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

**Date of decision: 20.07.2023**

NAME OF THE BUILDER		M/s Ramprastha Promoters and Developers Private Limited	
PROJECT NAME		"Ramprastha City"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/331/2022	Mrs. Anjali Agarwal and Dr. Aditya Agarwal V/s M/s Ramprastha Promoters and Developers Private Limited	Shri B L Jangra Advocate and Ms. R. Gayatri and Shri Navneet Kumar Advocates
2.	CR/333/2022	Mrs. Renu Wahi V/s M/s Ramprastha Promoters and Developers Private Limited	Shri B L Jangra Advocate and Ms. R. Gayatri and Shri Navneet Kumar Advocates
3.	CR/391/2022	Mrs. Veena Gupta V/s M/s Ramprastha Promoters and Developers Private Limited	Shri Nilotpal Shyam Advocate and Ms. R. Gayatri and Shri Navneet Kumar Advocates

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be

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responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ramprastha City" (Residential plotted colony) being developed by the same respondent/promoter i.e., M/s Ramprastha Promoters and Developers Private Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, possession along with delayed possession charges along with interest and other.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Ramprastha City", Sectors 92, 93 & 95, Gurugram, Haryana.
<p><b>Possession Clause: -</b></p> <p><b>11. Schedule for possession</b></p> <p>(a). "The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan.</p> <p>(b). .....</p> <p>(C). .....</p> <p><b>(d). Failure of Company to offer possession and payment of compensation.</b></p> <p><i>In the event the Company fails to offer of possession of the said plot, within thirty (30) months from the date of execution of this Agreement then after</i></p>	

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*the expiry of grace period of 6 months from the said 30(thirty) months subject to the intending Allottee(s) having made all payments as per the payment plan and subject to the terms, conditions of this Agreement and bring force majeure circumstances, .....*"

**(Emphasis supplied)**

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of plot buyer's agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/331/2022  Mrs. Anjali Agarwal and Dr. Aditya Agarwal V/s M/s Ramprastha Promoters and Developers Private Limited  Date of Filing of complaint 31.01.2022	Reply received on 29.04.2022	D- 116, block-D  area measuring 250 sq. yds.  (Page no. 35 of the complaint)	30.01.2014  (Page no. 32 of the complaint)	30.07.2016  (Note: - 30 months from date of agreement i.e., 30.01.2014)	TSC: - 27,00,000/-  [As per payment plan page no. 45 of the complaint]  AP: - 22,15,000/-  [As per averment of complainant at page no. 10 of the complaint and the same was admitted by the respondent in its reply]	Possession along with delayed possession charges and other charges
2.	CR/333/2022  Mrs. Renu Wahi V/s M/s Ramprastha Promoters and Developers Private Limited	Reply received on 29.04.2022	A- 243, block-A  area measuring 250 sq. yds.	24.12.2013  (Page no. 30 of the complaint)	24.06.2016  (Note: - 30 months from date of agreement i.e., 24.12.2013)	TSC: - 27,00,000/-  [As per payment plan page no. 47 of the complaint]  AP: - 22,15,000/-	Possession along with delayed possession charges and other charges

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	Date of Filing of complaint 31.01.2022		(Page no. 35 of the complaint)			[As per averment of complainant at page no. 10 of the complaint and the same was admitted by the respondent in its reply]	
3.	CR/391/2022  Mrs. Veena Gupta V/s M/s Ramprastha Promoters and Developers Private Limited  Date of Filing of complaint 21.02.2022	Reply received on 29.04.2022 2	D- 152, block-D area admeasuring 200 sq. yds.  (Page no. 40 of the complaint)	16.01.2014  (Page no. 37 of the complaint)	16.07.2016  (Note: - 30 months from date of agreement i.e., 16.01.2014)	TSC: - 21,60,000/- [As per payment plan page no. 52 of the complaint]  AP: - 18,22,000/- [As per averment of complainant at page no. 10 of the complaint]	Possession along with delayed possession charges and other charges
<b>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</b> <b>Abbreviation Full form</b> TSC Total Sale consideration AP Amount paid by the allottee(s)							

- The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the

authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/331/2022 titled as Mrs. Anjali Agarwal and Dr. Aditya Agarwal V/s M/s Ramprastha Promoters and Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

**A. Project and unit related details**

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

**CR/331/2022 titled as Mrs. Anjali Agarwal and Dr. Aditya Agarwal V/s M/s Ramprastha Promoters and Developers Private Limited.**

S. N.	Particulars	Details
1.	Name of the project	"Ramprastha City", Sectors 92, 93 & 95, Gurugram, Haryana
2.	Project area	128.594 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010 valid upto 08.06.2016
5.	Name of licensee	Ramprastha Housing Pvt. Ltd. and others

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6.	Date of environment clearances	10.05.2019 [as per information obtained by planning branch]
7.	RERA Registered/ not registered	Registered vide no. 13 of 2020 dated 05.06.2020
8.	RERA registration valid up to	31.12.2024
9.	plot no.	D- 116 (Page no. 35 of the complaint)
10.	Unit area admeasuring	250 sq. Yds. (Page no. 35 of the complaint)
11.	Welcome letter	22.04.2014 (Page no. 28 of the complaint)
12.	Allotment letter	22.04.2014 (Page no. 29 of the complaint)
13.	Date of execution of plot buyer's agreement	30.01.2014 (Page no. 32 of the complaint)
14.	Possession clause	<b>11. Schedule for possession</b> (a). "The company shall endeavour to offer possession of the said plot, within thirty <b>(30) months from the date of this Agreement subject to timely payment by the intending Allottee(s)</b> of Total Price, stamp duty, registration charges and any other changes due

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		and payable according to the payment plan.” (Page no. 38 of the complaint).
15.	Due date of possession	30.07.2016 (Note: - 30 months from date of agreement i.e., 30.01.2014)
16.	Total sale consideration	Rs.27,00,000/- [As per payment plan page no. 45 of the complaint]
17.	Amount paid by the complainant	Rs.22,15,000/- [As per averment of complainant at page no. 10 of the complaint and the same was admitted by the respondent in its reply]
18.	Payment plan	Possession linked payment plan [As per payment plan page no. 47 of the complaint]
19.	Occupation certificate /Completion certificate	Not received
20.	Offer of possession	Not offered
21.	Delay in handing over the possession till date of this order i.e., 20.07.2023	6 years 11 months and 20 days

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -

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- a. That in the year 2006, the predecessor of the respondent M/s Ramprastha Promoters Private Limited had approached the complainants and represented that a collaboration agreement has been entered into with the landowners by the company and further represented that it had obtained DTCP licence no. 44 of 2010 to develop, market and sell residential plots in "Ramprastha City" Sectors - 92, 93 & 95 Gurugram, Haryana.
- b. That the believing upon the representation and approval shown by predecessor's officials of Ramprastha Promoters Private Limited the complainant booked a residential plot admeasuring 250 sq. yards against total sale consideration sum of Rs.27,00,000/- by paying booking amount sum of Rs.8,00,000/- through cheque no. 923781 dated 22.05.2006 drawn on IDBI Bank.
- c. That the complainants were assured that the possession of the plot completed in all respect shall be handed over within 30 months from date of booking, but no agreement was signed. After making booking of the plot, they visited several times in the office of the respondent to sign a plot buyer agreement in respect of the plot in question, but no plot buyer agreement was sent or signed by the respondent.
- d. That after passing of six years of date of booking of plot, in the year 2012, it was communicated that due to internal restructure between group of companies, M/s Ramprastha Promoter & Developers Private Limited (Developer), the present respondent came into being and undertook the responsibility to complete all the development activity relating to construction and completion of the project in which the plot was booked by them and the respondent executed a fresh plot buyer

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agreement dated 28.09.2012 with the complainants but without mentioning the particulars of the plot and mischievously mentioned one plot ad-measuring 250 sq. yards in the agreement. The respondent mischievously did not mention the possession clause also (date of handing over the possession of the plot in question) in the agreement dated 28.09.2012.

- e. Further, passing of seven years of the date of booking of plot the complainants received a welcome letter dated 22.04.2014 from the respondent whereby a residential plot no. D-116 of 250 sq. yards in "Ramprastha City" Sector-92, 93 & 95 Gurugram, Haryana was allotted to them.
- f. That as per clause no. 11 of the plot buyer agreement dated 30.01.2014 the possession of the said plot was to be handed within 30 months on or before 30.07.2016 from the date of execution of plot buyer agreement however, no possession was offered by the respondent till date and only illegal demands were raised without completing the development of the project. They paid all the payment in time as and when raised by it.
- g. That the complainants had paid sum of Rs.22,15,000/- which is more than 95% till date but the respondent failed to fulfil obligation thus committed breach of terms and condition of the agreement and utilized the invested money to develop other project thereby played fraud upon the complainants.
- h. That the complainant(s) being a senior citizen who had invested all-hard-earned money in purchasing said plot but on account of delay of period 15 years the complainants are left with no other efficacious

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remedy available except to file the present complaint before this authority for seeking possession and delayed interest along with statutory penalty for wilful breach of plot buyer agreement dated 13.6.2006, 28.09.2012 and 30.01.2014.

- i. That respondent had failed to complete the project and failed to give offer of possession within time hence cause of action arose to file the present complaint on 20.08.2021 when the complainant visited in the office of the respondent and visited the above-mentioned project but found no construction/development activity done by the respondent to complete the project and cause of action still subsist hence the present complaint is being filed within period of limitation.

**C. Relief sought by the complainant: -**

9. The complainant has sought following relief(s)
  - a. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from date of booking till handing over the possession of the flat;
  - b. The respondent be directed to handover physical possession of the said plot.
10. On the date of hearing, the authority explained to the respondent /promoter about the contraventions 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 contested the complaint on the following grounds: -
  - I. That the present complaint is not maintainable in its authority and the complaint is strictly liable to be dismissed on the grounds

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presented hereunder by the respondent. That the authority has no jurisdiction to entertain the present complaint. It is submitted therefore that this reply is without prejudice to the rights and contentions of the respondent contained in the said application.

- II. That the complainants have approached the respondent in the year 2006 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sector 92, 93 & 95, Gurugram. The complainants fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere futuristic project have decided to make an investment in the said project for speculative gains. Thereafter, on 22.05.2006, they have paid a booking amount of Rs.8,00,000/- through cheque bearing no. 923781 drawn on IDBI bank towards booking of the said project pursuant to which a receipt bearing no. 60 dated 13.06.2006 was issued to the complainants. It was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.
- III. That the complainants have made the booking of the plot in the futuristic project of the respondent, and have paid an amount of Rs.22,15,000/- which is part or total consideration of the plot. That the said payment were not full and final payments and further payments inter alia towards government dues on account of EDC/IDC charges are payable at the time of allotment of plot and execution of plot buyer's agreement.
- IV. That further no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been

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clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the Authority which is within the knowledge of the complainants. As per averments made by them, the petitioner has claimed interest from the June 2006 which also shows that the amount claimed by the complainants have hopelessly barred by limitation.

- V. The claims for possession are superfluous and non-est in view of the fact that the complainants are actually not even entitled to claim possession of the plot as on date. It is only on default in offer/handover of possession that the complainants right to claim possession/refund crystalizes.
- VI. That no documents have been submitted by the complainants in support of the time for possession and as per the complainant's own averments the plot was required to handover in three years period i.e., in June 2006. Hence, it is submitted, without admitting to such date of handover of possession cited by the complainants, even if the date of possession was to be construed in June 2006, the period of limitation has come to an end in the year June 2009. There is no obligation on the part of the respondents to allot or handover any plot to the complainants since they have failed to provide any evidence of execution of plot buyer's agreement in favour of the complainants.
- VII. The complainants have attempted to create a right in their favour by resorting to terminate transactions which have become hopelessly barred by time and after the period of limitation has lapsed it cannot be revived. That the complainants were never interested in fulfilling

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the necessary formalities towards booking of the said plots. Neither the complainants have made any further payment for plot as such in Ramprastha City nor did they submit any application for the same. It is apparent that the complainants never turned up for the completion of the formalities.

- VIII. That the booking did not fructify and proceed to the stage of execution of plot buyer's agreement due to the complainant own failure to pay the full consideration towards purchase price of the said plot and complete the formalities.
- IX. That without prejudice to the above, that the complainants are not "Consumer" within the meaning of the Consumer Protection Act, 2019 since their sole intention was to make investment in a futuristic project of the respondent only to reap profits at a later stage when there is increase in the value of land at a future date which was not certain and fixed. Neither there was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.
- X. The complainants having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project. They have no intention of using the said plot for their personal residence or the residence of any of their family members. If the complainants had such intentions, they would not have invested in a project in which there was no certainty of the date of possession. The sole purpose of the complainants was to make profit from sale of the plot at a future date. Now since the real estate

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market is in a desperate and non-speculative condition, the complainants cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. That the complainants having purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said futuristic undecided plot and therefore, the present complaint being not maintainable and must be dismissed in limine.

- XI. That complainants have approached the respondent office in May/June 2006 and have communicated that the complainants are interested in a project which is "not ready to move" and expressed their interest in a *futuristic project*. That the complainants were not interested in any of the ready to move in/near completion projects of the respondent. It is submitted that a futuristic project is one for which the only value that can be determined is that of the underlying land as further amounts such as EDC/IDC charges are unknown and depends upon the demand raised by the statutory authorities. That on the specific request of the complainants, the investment was accepted towards a futuristic project and no commitment was made towards any date of handover or possession since such date was not foreseeable or known even to the respondent. The respondent had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainants towards development charges, but the complainants were duly informed that such charges

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shall be payable as and when demands will be made by the Government. The complainants are elite and educated individuals who have knowingly taken the commercial risk of investing a project the delivery as well as final price were dependent upon future developments not foreseeable at the time of booking transaction. Now the complainants try trying to shift the burden on the respondent as the real estate market is facing rough weather.

- XII. That therefore the complainants cannot be said to be genuine consumers by any standards; rather the complainants are mere investors in the futuristic project. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.
- XIII. That the complainants knowingly invested in an undeveloped land in a futuristic area where on the date of investment by them, even the zoning plans were not sanctioned by the Government. It is understood that the applicants are educated and elite individuals and had complete understanding of the fact that unless zoning plans have been approved their investment is in the shape of an undeveloped agricultural land; however as and when zoning plans have been approved, it will be possible to implement the development of a residential plotted colony in the area and the investment of the complainant will appreciate substantially. This clearly shows that the complainant had sheer commercial motives. It is submitted that an

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investor in a futuristic undeveloped plot cannot be said to be a genuine buyer by any standards.

- XIV. That complainants have nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". Therefore, the complainants cannot be said to be consumers of respondent within the caricature of consumer within the Consumer Protection Act, 1986. The complainants have deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf, the authority may strictly direct the complainants to adduce any documentary evidence in support of their averments.
- XV. That the complainants are already in ownership of one property which the complainants have materially concealed. Hence, by any standard of imagination, the present complainants cannot to be said to have purchased the present property for personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or gain, the complainants are plainly investors who have filed the complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, they cannot be said to have approached this authority with clean hands and have approached this authority only with malafide intention to harass the respondent in the most harm causing way possible.
- XVI. That the complainants have concealed its own inactions and defaults since the very beginning. They have deliberately concealed the

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material fact that the complainants are at default due to non-payment of developmental charges, govt charges (EDC & IDC), PLC and interest free maintenance security (IFMS), which has also resulted into delay payment charges/ interests.

XVII. The initial date of booking to the filing of the present complaint, the complainants have never raised any issues or objections. Had any valid issue been raised by complainants at an earlier date, the respondent would have, to its best, endeavored to solve such issues much earlier. However, now to the utter disappointment of the respondent, the complainants has filed the present complaint based on fabricated story woven out of threads of malice and fallacy.

XVIII. That apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent: -

- That the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainants have indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of authority and in further view of the fact the complainants have knowingly made an investment in a future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is

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beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.

- That the complainants primary prayer for handing over the possession of the said plot is entirely based on imaginary and concocted facts by the complainants and the contention that the respondent was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainants have complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated May, 2006 was made by them towards a *future potential project* of the respondent and there was no question of handover of possession within any fixed time period as falsely claimed by the complainants; hence the complaint does not hold any ground on merits as well.
- The complainant has approached the respondent, it was made unequivocally clear to the complainant that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land and specific plot with preferred location can be demarcated only when the government releases the zoning plans applicable to the area Village Basai, Gadauli Kalan, Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainant. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment

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towards a prospective undeveloped agricultural plot of the respondent.

XIX. That even in the adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyer/allottee. That even in such harsh market conditions, the respondent has been continuing with the construction of the project and sooner will be able to complete the development of the project.

XX. The projects in respect of which the respondents have obtained the occupation certificate are described as hereunder: -

S. No.	Project Name	No. of apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received
3.	Edge Tower I, J, K, L, M Tower H, N Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G)	400 160 80 640	OC received OC received OC received OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

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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 complainants.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

14. 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**

15. 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;*

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**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.*

16. So, in view of the provisions of the Act 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 complainants at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I. Objections regarding the complainants being investors.**

17. The respondent has taken a stand that the complainants are the investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of

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the apartment buyer's agreement, it is revealed that the complainants are buyers and paid total price of **Rs.22,15,000/-** to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of above-mentioned definition of "allottees" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

**F. II Objection regarding maintainability of complaint.**

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19. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainants have approached the respondent in the year 2006 to invest in one of the futuristic projects of the respondent situated in Gurugram. They have paid a booking amount of Rs.8,00,000/- on 22.05.2006. The respondent further submitted that the complainants in its complaint have submitted that the plot was required to be handed over within a period of 3 years from the date of booking which comes out to be June 2009 and the period of limitation has come to an end in the year 2009. Hence, the complaint is not maintainable on the above-mentioned ground.
20. On consideration of the documents available on record and submissions made by the party, the authority observes that the buyer's agreement w.r.t. the plot was executed with the allottee on 30.01.2014. As per clause 11 of the buyer's agreement, the possession of the subject plot was to be offered within a period of 30 months from the date of execution of plot buyer's agreement which comes out to be 30.07.2016.
21. However, the said project of the allotted plot is an ongoing project, and the respondent/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the

date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

22. The legislation is very clear in this aspect that a project shall be regarded as an “ongoing project” until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
23. Moreover, it is observed that despite passing a benchmark of due date on 30.07.2016, till date it has failed to handover the possession of the allotted plot to the complainants and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduce as under for ready reference: -

**22. Continuing breaches and torts-**

*In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.*

24. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint barred by limitation is hereby rejected.

**G. Findings on the relief sought by the complainants.**

- G.I Direct the respondent to pay interest for every month of delay at prevailing rate of interest from date of booking till handing over the possession of the flat;**

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25. In the present complaint, the complainants intend to continue with the project and are 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."*

26. As per article 11(a) of the agreement to sell provides for handing over of possession and is reproduced below:

**"11. Schedule for possession**

(a) *"The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan.*

(b) .....

(c) .....

**(d) Failure of Company to offer possession and payment of compensation.**

*In the event the Company fails to offer of possession of the said plot, within thirty (30) months from the date of execution of this Agreement then **after the expiry of grace period of 6 months from the said 30(thirty) months subject to the intending Allottee(s) having made all payments as per the payment plan and subject to the terms, conditions of this Agreement and bring force majeure circumstances, .....** "*

27. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment by the intending complainant of total price, stamp duty,

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registration charges and any other charges due and payable according to the payment plan. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the plot buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**28. Due date of handing over possession and admissibility of grace period:**

As per clause 11 of the plot buyer's agreement, the promoter has proposed to hand over the possession of the plot within 30 months from the date of execution of this agreement and further 6 months grace period subject to timely payment by the intending allottee of total price, stamp duty, registration charges, and any other charges due and payable according to the payment plan. The authority observed that in the said clause, the respondent has failed to mention any expression w.r.t entitlement of grace

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period for calculating due date of possession, therefore, the promoter/ respondent is not entitled to any grace period.

**29. Payment of delay possession charges at prescribed rate of interest:**

Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:  
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

30. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

31. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.07.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.

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32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.

34. 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 the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the agreement executed between the parties on 30.01.2014, the possession of the subject plot was to be delivered within a period of 30 months from the date of execution of this agreement which comes out to be 30.07.2016. As far as grace period is





concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.07.2016. The respondent has failed to handover possession of the subject plot till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the plot buyer's agreement dated 30.01.2014 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

35. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 30.07.2016 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G. II The respondent be directed to handover physical possession of the said plot.**

36. The respondent is legally bound to meet the pre-requisites for obtaining a completion certificate from the competent authority. It is unsatisfied that





even after the lapse of more than 6.11 years from the due date of possession the respondent has failed to apply for CC/part CC to the competent authority. The promoter is duty bound to obtain CC/part CC and hand over possession only after obtaining CC/part CC.

37. In the complaint bearing no. **CR/391/2022**, the following additional reliefs are sought by the complainant.

- G. III To deliver the said unit to the complainant by revoking illegal demands.**
- G. IV. To direct the respondent company to give a firm commitment with regard to actual date of handing over the possession.**

38. There is nothing on the record to show that the respondent has applied for CC/part CC or what is the status of the development of the above-mentioned project. So, in such a situation no direction can be given to the respondent to handover the possession of the subject unit, as the possession cannot be offered till the CC/part CC for the subject plot has been obtained. However, delay possession charges as ascertained by the authority shall be payable to the complainant as per provisions of the Act. Further, as on date, the cause of action has not arisen with regard to the aforesaid reliefs. The respondent has not raised any demand and it is mere contingency that the respondent may or may not raise demand in regard to escalation and hidden charges of subject unit. Therefore, the complainants are advised to approach the authority as and when cause of action arises. Further, the respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

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**G.V. To direct the respondent company to pay a cost of Rs.1,00,000/- towards the cost of litigation.**

39. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

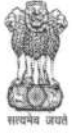
**F. Directions of the authority**

40. 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):
- The respondent is directed to pay interest to the each of the complainant(s) against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 30.07.2016 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate from

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- the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondent shall not charge anything from the complainants which is not the part of the plot buyer's agreement.
  - iii. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted plot.
  - iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate from the competent authority. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
  - v. The arrears of such interest accrued from due date of possession of each case till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
  - vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the

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respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
42. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
43. File be consigned to registry.

Dated: 20.07.2023

*Vijay Kumar Goyal*

**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram