

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

Complaint no. : 6254 of 2022  
Complaint filed on : 27.09.2022  
Date of decision : 06.07.2023

Sudha Sharma  
R/o: - T-09/601, Palam Terrace Select, Sector- 66,  
Gurugram- 122018

**Complainant**

Versus

M/s Ramprashtha Promoters & Developers Private  
Limited.  
**Regd. Office at:** - Plot No. 114, Sector-44, Gurugram-  
122002

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

Member

**APPEARANCE:**

Ms. Sudha Sharma  
Shri Varun Katyal

Complainant in person  
Advocate for the respondent

**ORDER**

1. The present complaint 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 to the allottee as per the agreement for sale executed *inter se* them.

**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. N.	Particulars	Details
1.	Name of the project	Ramprastha City", Sector- 92,93 and 95 Gurugram
2.	Project area	Cannot be ascertained
3.	plot no.	N.A.
4.	Unit area admeasuring	250 sq. Yds. (Page no. 15 of the complaint)
5.	Date of booking application	Annexed but not executed
6.	Welcome letter	N.A.
7.	Provisional allotment letter	14.12.2013 (Page no. 15 of the complaint)
8.	Date of execution of plot buyer's agreement	Not executed
9.	Possession clause	N.A.
10.	Due date of possession	Cannot be ascertained
11.	Basic price of the plot	Cannot be ascertained

12.	Amount paid by the complainant	Rs.72,50,000/- [As per receipt information page no. 16 of complaint]
13.	Refund request made on	15.06.2019 (Page no. 21(1) of the complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- a. That the complainant has booked a plot in the project of respondent named "Ramprastha City" at sector 92, 93 and 95, Gurugram and was allotted a plot measuring 250 sq. yards in the said project vide provisional allotment letter dated 14.12.2013. The total sale consideration of the plot was Rs.72,50,000/- and she has paid it all through cheque as evident from the documents annexed with the complaint.
- b. That the complainant continued to pursue the respondent for formal allotment of plot and possession thereof by going to its office and also communicated with the representatives of respondent on phone, but no response was received from it. Hence, the complainant sent a letter dated 23.02.2018 to the respondent to refund the paid-up amount money along with interest. However, no reply was received from the respondent in response. Thereafter, the complaint vide emails dated 11.03.2018, 15.06.2019, 13.08.2019,

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19.08.2019, 9.12.2020, 2.01.2022 and 16.7.2022 requested the respondent for allotting, giving possession of the plot or refund of the paid-up amount along with interest. But the respondent did not pay any heed to the just and genuine request of the complainant.

- c. That the complainant further talked to the Sales Manager of respondent named Mr. Saurabh Rana several times regarding the refund of the paid-up amount, but no refund was initiated by it so far.
- d. That about 9 years have passed but still neither the possession of the plot was handed over nor any refund was made in her account. Hence, the complainant has filed this complaint seeking refund of her hard-earned money along with interest.

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

4. The complainant has sought following relief(s):

- I. Direct the respondent to refund the entire amount i.e., Rs.72,50,000/- to the complainant along with 10% interest from the date of respective payments till its complete realization.

5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 25.01.2023, and 06.07.2023. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent intentionally delayed the procedure of the authority by avoiding to file written reply. Therefore,

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in view of order dated 06.07.2023, the defence of the respondent was struck off.

6. 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 on the basis of these undisputed documents and submission made by the parties as well as the written submission of the complainant.

**D. Jurisdiction of the authority**

The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**

7. 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.

**D.II Subject matter jurisdiction**

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

**Section 11**

.....

(4) The promoter shall-

(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;

**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.

9. 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 complainant at a later stage.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**E. Findings on the relief sought by the complainant**

**E.I Direct the respondent to refund the entire amount i.e., Rs.72,50,000/- to the complainant along with 10% interest from the date of respective payments till its complete realization.**

12. The complainant submits that vide receipt dated 14.12.2013, she had paid an amount of Rs.72,50,000/- to the respondent/promoter and the same was confirmed by the respondent and promised the allotment of a plot admeasuring 250 sq. yards. in any of the project namely "Ramprastha City" located in Gurugram. Despite repeated follow up by complainant with the respondent /promoter vide emails and letters

dated 14.02.2018, 11.03.2018, 15.06.2019, 13.08.2019, 19.08.2019, 09.12.2020, 20.01.2022 and 16.07.2022 (annexure P3 to P10) neither allotment letter was issued in respect of the aforesaid plot, nor the respondent has finalized anything regarding specify the said project till date. The complainant due to the neglectful behaviour of the respondent filed the present complaint pleading for refund along with interest before this authority.

13. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

*"Every promise and every set of promise forming the consideration for each other is an agreement."*

14. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not herby expressly declared to be void."*

15. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. The holders of those receipt/allotments are harassed lot failing to act on the



basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre- Rera cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

16. But the document/receipt so issued in favour of a person can be termed as an **agreement for sale** to drag the developer before RERA Authority and compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.
17. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest at the prescribed rate as provided under section 18(1)(b) of the Act. Sec. 18(1)(b) of the Act is reproduced below for ready reference.

**“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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under **this Act or for any other reason,**

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*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.”*

*(Emphasis supplied)*

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate of interest 10%. However, the allottee is seeking refund of the amount paid by her with interest at prescribed rate as provided 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.*

19. 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

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reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

20. 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., 06.07.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

21. 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;"*

22. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within her right for seeking refund under section 18(1)(b) of the Act, 2016.

23. The instant matter falls in the category where the promoter has failed to allot a plot/unit in its any of the upcoming project as detailed earlier

despite receipt of Rs.72,50,000/- made in the year 2013. So, the case falls under section 18(1)(b) of the Act of 2016.

24. In the instant matter, even after lapse of 9 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter- se parties. The respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.
25. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
26. The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be***

***taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.***

27. In view of the above-mentioned reasoning, the date of signing of provisionally allotment letter, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 14.12.2016.
28. Moreover, the authority observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

29. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

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30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @ 10.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F. Directions of the authority**

31. 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 respondent/promoter is directed to refund the amount i.e., Rs.72,50,000/- received by it from the complainant along with interest at the rate of 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

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ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

32. Complaint stands disposed of.

33. File be consigned to registry.

Dated: 06.07.2023

V.I-3  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

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**GURUGRAM**