

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

Complaint no. : 1516 of 2023
Complaint filed on : 12.04.2023
First date of hearing : 05.09.2023
Date of decision : 05.09.2023

Charat Singh Yadav

R/o: Flat no. 303, Sector 10A, Gurugram, Haryana.

Complainant

Versus

M/s Ramaprastha Promoters & Developers Private
Limited

Office address: C-10, C Block, Market Vasant Vihar,
New Delhi.

Also at: Plot-114, Sector-44,
Gurugram, Haryana-122002.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sushil Yadav

Ms. R Gayatri Mansa

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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.

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A. Project and unit related details

2. The particulars of the project, the details of 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", Sectors 37C and 37D, Gurugram, Haryana
2.	Project area	105.402 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	128 of 2012 dated 28.12.2012 Valid up to 06.04.2025
5.	Name of licensee	B.S.Y. Developers Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not registered
7.	Allotment letter dated	09.09.2014 [Page 31 of complaint]
8.	Plot no.	B-63, block B (Page no. 31 of the complaint)
9.	Unit area admeasuring	250 sq. Yds. (Page no. 31 of the complaint)
10.	Date of execution of plot buyer's agreement	20.01.2015 [Page 13 of complaint]
11.	Possession clause	11. SCHEDULE FOR POSSESSION

		<p>The Company shall endeavor to offer possession of the Said Plot, within thirty (30) months with another grace period of six (6) months from the date of execution 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>[Page no. 18 of complainant]</p>
12.	Due date of possession	20.07.2017 Note: Grace period is not included
13.	Basic price of the plot	Rs.20,00,000/- [Page 27 of complaint]
14.	Total sale price of the plot	Rs.42,75,000/- [Page 27 of complaint]
15.	Amount paid by the complainant	Rs.37,00,000/- [As per submitted by complainant page no. 8 of the complaint and the same was admitted by the respondent in its reply at page 9 of reply]
16.	Occupation certificate /Completion certificate	Not received
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That the respondent gave advertisement in various leading newspaper about their forthcoming project named 'Ramprastha

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City' Sector 37D and 37D, Gurugram promising various advantages, like and timely completion/execution of the project. Relying on the promise and undertakings given by the respondent, the complainant booked a plot admeasuring 250 sq. yd. in aforesaid project for total sale consideration of Rs.42,75,000/-. The complainant made payment of Rs.37,00,000/- to the respondent vide different cheques on different dates.

- ii. That the plot buyer's agreement was executed on 20.01.2015 and as per the said agreement, the respondent had allotted a plot bearing no. B-63 having area of 250 sq. yd. to the complainant. As per clause 11 of the plot buyer's agreement, the respondent had agreed to deliver the possession of the plot within 30 months from the date of signing of plot buyer's agreement i.e., 19.07.2017 with an extended period of 180 days.
- iii. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for payments which the complainant gave on time. The complainant when visited to the site was shocked and surprised to see that construction work is not going on and no one was present at the site to address the queries of the complainant.

- iv. That the construction of the block in which the complainant plot was booked with a promise by the respondent to deliver the plot by 19.07.2017 but was to complete within time for the reasons best known to the respondent; which clearly shows the ulterior motive of the respondent was to extract money from the innocent people fraudulently.
- v. That due to this omission on the part of the respondent, the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession on time. That as per clause 11(c) of the plot buyer's agreement, it was agreed by the respondent that in case of delay, the respondent shall pay to the complainant a compensation @ Rs.90/- per sq. yd. per month of the total area of plot. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.90/- per sq. yd. per month for the period of delay in just and the respondent has exploited the complainant by not providing the possession of the plot even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. The respondent has incorporated the clause in one-sided plot buyer's agreement and offered to pay a sum of Rs.90/- per sq. yd. for every month of delay.

If we calculate the amount in terms of financial charges, it comes to approximately @2% per annum rate of interest whereas the respondent charges @ 24% per annum interest on delayed payment.

- vi. That on the ground of parity and equity, the respondent also subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promised date of possession till the plot is actually delivered to the complainant.
- vii. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the plot in question along with prescribed interest on the amount deposited by the complainant, but the respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard earned money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant

4. The complainant is seeking the following relief:
 - i. Direct the respondent to handover possession of the subject unit.
 - ii. Direct the respondent to pay interest at the prescribed rate for the delayed period in handing over the possession calculated from the

date of delivery of possession as per the plot buyer's agreement till the actual date of handing over the possession of the subject unit.

- iii. Any other relief/order or direction, which this Hon'ble Authority may deem fit and proper, considering the facts and circumstances of the present complaint.

D. Reply filed by the respondent

5. The respondent has contested the complaint on the following grounds:

- i. That no default or contravention of the provisions of the Act has occurred on the part of the respondent herein. It is submitted that on examination of the zoning plans which were issued by the Government in early 2014, it became clear that there were various aspects which required further correction in the zoning plans of the Government and which will have a direct effect on the layout of a residential plotted colony. The various factors as evidenced in letter dated 07.04.2014 are mentioned herein below:

- a. That there is a HSIIDC Nala which is passing through the land adjoining to the HUDA Nala in the village Gadauli Kalan.
- b. That the boundary lines of village Basai and Gadauli Kalan is wrong and not as per the sizra plans.
- c. The position of khasra nos. were not correct.
- d. That a new HT Line passing through the colony has been installed by Dakshin Haryana Bijli Vitaran Nigam which will

have an effect on various plots of land and also a separate green corridor was required to be created on both sides of the HT line.

- ii. That the revision in zoning plans of any development area is a cumbersome process undertaken by the State authorities and the respondent has no control over the process. The respondent was obliged to point out the various discrepancies and corrections that were required in the Zonal Plans and which will have a further effect on the layout of the residential plotted colony. By September 2014, it was clear that fresh zoning is required to be undertaken and this will take considerable time. This was specifically informed to all the allottees.
- iii. It is submitted that the list of time-consuming discrepancies is as under:
 - a) Incorrect Depiction of Village Boundary lines:
 - b) Further the boundary of village Gadauli Kalan and Basai is shown incorrectly in the Sectoral Plan as compared to the actual physical position over the site. The Sectoral Plan depicts the boundary as straight whereas the actual physical position is altogether different.
 - c) Because the adequate emphasis was not given to the fact the village boundary of Gadauli kalan and Basai is majority affecting village Gadauli Kalan with substantial boundary deviation of approx. 15 - 20 meters.

- d) Because it was required to consider that said deviation of 15 – 20 meters is running all along to boundary of villages Gadauli Kalan and Basai starting from Railway lines, which is not minor deviation but on the other hand majorly affects/disturbs the area bearing the plotted project.
- e) Because said deviation of 15 – 20 meters has adversely affected the alignment of internal sector road of 24 meters, thereby causing deviation to the extent of 20 – 30 meters in internal sector road of 24 meters.
- iv. That because at the time of application by the respondent for layout plan approval, there was no HT Lines passing through the colony, but later on, DHBVNL installed HT Lines passing through several plots demarcated as per approved layout plan. Therefore, for HT Lines, separate green corridor of 18M needs to be created on land over which HT Lines is installed. Due to such flaw, the licensed area to the extent of approx. 7-8 acres is getting affected.
- v. That a total number of 144 plots are getting affected directly. It is further submitted that approx. 60-70% of the plots of the project developed by the respondent was adversely affected because any small change in the layout plan will impact whole project because one demarcated change will lead to another change in the layout plan. The impact of one change in the plot will have an impact on subsequent plot/ road/ amenities as demarcated in the layout plan by the respondent.

- vi. That without prejudice to the above, it is further stated herein that the reasons for delay in obtaining the approvals, 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 complainant had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and hence outside the purview of the authority. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this Hon'ble Authority and hence the complaint is liable to be dismissed on this ground as well.
- vii. That when the complainant had approached the respondent, it was unequivocally clear to the complainant that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land owned by the respondent unless zoning plans are approved and RERA registration is obtained and further, the respondent never offered to handover any specific plot within any fixed time period; and it is also pertinent herein to mention that 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.

- viii. That allowing the present complaint shall be contrary to the objectives of the Act. The objective of the RERA Act is not only to safeguard the interests of the allottees but also, to ensure the healthy promotion of real estate sector and to protect the interests of the several stake holders involved in such sector. That the wordings of the section 32 of the Act clearly dictates the intention of the legislature behind enacting the RERA Act. That, the authority carries a duty towards the real estate sector apart from safeguarding the interests of the allottees.
- ix. That the authority is entrusted with the responsibility of ensuring the completion of the real estate projects within the stipulated timeline or such extended time, as the authority may deem fit in the interest of the common justice of both the allottee and the builder. That for a miniscule percentage of litigations by non-genuine buyers, the greater justice should not be discarded. That the completion of the project ensures the greater good of all the stakeholders involved and any impediment caused by reasons such as outflow of funds into litigation shall adversely impact the welfare of the stakeholders including the genuine buyers involved in the project. Therefore, the powers of the authority must be exercised judiciously while tilting in favour of the common good and to do the ultimate justice.

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E. Jurisdiction of the authority

6. 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

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

8. Section 11(4)(a) of the Act 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) 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings of the authority

F.I Possession and delay possession charges

10. **Relief sought by the complainant:** Direct the respondent to handover possession of the subject unit. Direct the respondent to pay interest at the prescribed rate for the delayed period in handing over the possession calculated from the date of delivery of possession as per the plot buyer's agreement till the actual date of handing over the possession of the subject unit.
11. 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."

12. Clause 11(a) of the plot buyer's agreement provides time period for handing over the possession and the same is reproduced below:

"11. Schedule for possession

- (a) *The Company shall endeavor to offer possession of the Said Plot, **within thirty (30) months with another grace period of six (6) months from the date of execution 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."*
(Emphasis supplied).

13. The plot buyer's agreement in the present complaint was executed on 20.01.2015. 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 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 observes that in the said clause, the respondent has failed to mention any expression w.r.t entitlement of grace period for calculating due date of possession, therefore, the promoter/respondent is not entitled to any grace period. Therefore, the due date of handing over possession as per the plot buyer's agreement comes out to be 20.07.2017.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the

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.

15. The legislature in its wisdom in the subordinate legislation under 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.
16. 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., 05.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.75%.
17. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
19. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the plot buyer's agreement. By virtue of clause 11(a) of the plot buyer's agreement executed between the parties on 30.01.2015, the possession of the subject plot was to be delivered within a period of 30 months from the date of the agreement. However,

the respondent has failed to deliver the possession of the subject plot within the stipulated time period as per the plot buyer's agreement.

20. 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. The respondent is legally bound to meet the pre-requisites for obtaining a completion certificate from the competent authority. It is unsatiated that even after the lapse of more than 6 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. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e. 10.75 % p.a. w.e.f. 20.07.2017 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. Directions of the authority

21. 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) of the Act:
- i. The respondent is directed to pay interest at the prescribed rate of 10.75% p.a. on the amount paid by the complainant for every

month of delay from the due date of possession i.e., 20.07.2017 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate from 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 arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the respondent-promoter to the complainant-allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the complainant before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate from the competent authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject plot, within a period of two months of the completion certificate.
- iv. The respondent shall not charge anything from the complainant which is not the part of the plot buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of

the plot buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

- v. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainant/allottee by the respondent-promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(z a) of the Act.

22. Complaint stands disposed off.

23. File be consigned to the registry.

HARERA
GURUGRAM

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2023