# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

**Complaint no. : 651 of 2022**
**Date of First hearing : 28.04.2022**
**Date of decision : 14.12.2023**

1. Sh. Madhur Maini
   **R/o:-** 16-28, Tower-A, Lenole Hill, Singapore-239227
2. Sh. Vinay Kumar Maini
   **R/o:-** 621B, Magnolias, Golf Course Road, DLF Phase 5, Gurugram, Haryana-122002
   **Both through POA Holder:** Sh. Akhileshwar Pd. Singh
   **R/o:** Sector-1, Vasundra, Ghaziabad, Uttar Pradesh-201012

**Complainants**

Versus

1. M/s Ramprashtha Promoters & Developers Private Limited.
2. M/s Ramprashtha Promoters Pvt. Ltd.
3. M/s Ramprashtha Estates Pvt. Ltd.
4. Sh. Arvind Walia, Director of R1 &R3.
5. Sh. Balwant Chaudhary Singh, Director of R1.
6. Sh. Amit Yadav, Authorized Signatory of R1 & R2.
7. Sh. Premprit Singh Bindra, Director of R2.
8. Sh. Raj Singh Yadav, Director of R2.

**Regd. Office at:** - C-10, Block Market, Vasant Vihar, New Delhi – 110057
**Corporate Office at:** - Plot No. 114, Sector-44, Gurugram- 122002

**Respondents**

**CORAM:**
Shri Vijay Kumar Goyal — Member

**APPEARANCE:**
Somdev Tiwari & Mrityunjay Mahendra — Advocates for complainants

Ms. R Gayathri Manasa — Advocate for the respondents

## ORDER

1. The present complaint has been filed by the complainants/allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Particulars | Details |
|---|---|---|
| 1. | Name of the project | "Ramprastha City" |
| 2. | Location of the project | Sector-92, 93 & 95, Gurugram |
| 3. | Nature of the project | Residential colony |
| 4. | DTCP license no. and validity status | i. 19 of 2014 dated 11.06.2014 valid up to 10.06.2018<br>ii. 25 of 2012 dated 29.03.2012 valid up to 28.03.2018 |
| 5. | RERA Registered/ not registered | Not Registered |
| 6. | Unit no. | D-89, Block-D<br>(As per page no. 80 of the complaint) |
| 7. | Unit area admeasuring | 500 sq. yds.<br>(As per page no. 80 of the complaint)) |
| 8. | Allotment Letter | 07.01.2014<br>(As per page no. 68 of the complaint) |
| 9. | Date of execution of plot buyer's agreement | 30.01.2014<br>(As per page no. 73 of the complaint) |
| 10. | Possession Clause | **11 (a) Schedule of Possession**<br>*The company shall endeavor to offer possession of the said plot, **within** thirty* |

| | | |
|---|---|---|
| | | *(30) months* ***from the date of the 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.*<br>*(As per page no. 83 of the complaint)* |
| 11. | Total Sale Consideration | Rs.1,19,79,165 /-<br>(As per page no. 92 of the complaint) |
| 12. | Amount paid by the complainants | Rs.87,82,500 /-<br>(As per page no. 34 of the complaint) |
| 13. | Payment Plan | Construction linked plan |
| 14. | Occupation certificate /Completion certificate | Not Obtained |
| 15. | Due date of possession | 30.07.2016<br>(**Note:** 30 months form the date of execution of PBA i.e., 30.01.2014)<br>(Inadvertently mentioned as 30.12.2017 in proceedings of the day dated 14.12.2023) |
| 16. | Offer of possession | Not available |
| 17. | Legal Notice | 26.11.2021<br>(As per page no. 109 of the complaint) |

## B. Facts of the complaints

3. The complainants have made the following submissions: -

I. The complainants submit that in 2006, they purchased five adjacent plots, admeasuring 300 sq. yards each from the respondent no.2, on its categorical representation that the plot was located at a posh locality in Sector 37-D, Gurugram in respondent no.2's upcoming project named 'Ramaprastha City'. The respondent no.2 also represented that the project would soon be completed and that possession of the plots purchased by the complainants would be delivered to them within a period of three years i.e., by 2009.

II. The plot buyer's agreement has also been executed with regard to the unit on 30.01.2014.

III. That based on such representations by the respondent no.2, the complainant no. 1 paid Rs.24,90,000/- in favour of the respondent no.2, towards booking the said unit on 11.08.2006 and 12.08.2006 and the same has also been acknowledged by respondent no.2 vide receipt dated 16.03.2009.

IV. That even upon receiving a sum of Rs.24,90,000/-, the respondents failed to provide any intimation/communication about the allotment of the said unit in the complainants' favour. The complainants on numerous occasions attempted to contact the respondent no.2 to enquire about the status of development and the date of possession of the said unit but to no avail.

V. That from 2007 till 2009, the respondent no.2 failed to provide any information regarding the development and allotment of the said unit booked by the complainants. The respondent no.2 also failed to share any documents with the complainants, on the basis of which the complainants could claim ownership of the said unit. Moreover, the respondent no.2 also failed to deliver possession of the said unit to the complainants by 2009, as had been promised by it, at the time of booking.

VI. After a delay of almost 4 years, the complainants received a letter dated 02.02.2010 from respondent no.2, informing them that it had received a Letter of Intent from Directorate Town & Country Planning, bearing Memo No. LC-2098-.ID (BS)/2009/1989, for the development of a residential township in Sector 92, 93 & 95, Gurugram and that the respondent no.2 was in the process of formally launching the project.

The letter also mentioned that respondent no.2 expected to complete the allotment procedure within the next three months.

VII. The complainants were shocked to receive this information, as all throughout they were under the impression that the project was already complete. However, as it turned out, the project was still in its nascent stages and the respondent no.2 seemed to have acquired the necessary permits and clearances for the same, only recently. It is also pertinent to mention that the letter dated 02.02.2010 offered plots that were shown to be in Sector 92, 93, and 95, Gurugram which was contrary to the terms on which the complainants booked the said unit. The respondent no.2 had unilaterally, changed the location of the said unit, from Sector 37-D to Sector 92, 93 and 95 Gurugram, without taking any prior consent from or intimation to the complainants. Moreover, the changed location was a relatively inferior to Sector 37-D, Gurugram. The said letter dated 02.02.2010, also claimed to be in continuation of an earlier letter dt.18.03.2009 sent by respondent no.2. But no such letter has ever been received by any of the complainants.

VIII. Despite the unilateral change in unit locations and the four-year long delay in reverting to the complainants, they chose not to enter into any dispute and accepted the respondent no.2's offer of the said unit in Sector 92, Gurugram, as they had already invested a substantial sum of Rs.24,90,000/- towards booking the said unit and wished to obtain possession of the same at the earliest. However, despite the complainant's repeated attempts to contact respondent no.2 through different mediums, respondent no.2's team was vague and evasive in their response. Consequently, the complainants suffered grave mental harassment and trauma for three years due to a failure to establish any communication with the respondent no.2 despite repeated efforts.

IX. That upon continuous follow-ups by the complainants, in 2012 respondent no.2 verbally requested the complainants to deposit a sum of Rs.34,81,250/- as a prerequisite for issuing an allotment letter for the said unit in favour of the complainants. The complainants complied with the respondent no.2's request and made the said payment in two instalments of Rs.27,37,500/- and Rs.7,43,750/- vide cheque dated 26.12.2012 and dated 22.01.2013, respectively. The respondent no.1 further acknowledged receipt of the two payments, vide two acknowledgement receipts dated 26.02.2013.

X. That the respondent no.1 and 2, executed a provisional allotment agreement dated 19.01.2013 with the complainants for provisionally allotting a unit admeasuring 300 sq. yards, in the project, which had now unilaterally shifted from Sector 37-D to Sector 92, 93 and 95 Gurugram, Haryana. The PAA categorically mentioned that as part of the internal restructuring exercise between Ramprastha and the other group companies, the respondent no. 1 was to undertake development of the project along with all incidental and related activities, including development of plots, construction activities, allotments, receiving payments, issuance of receipts, sale and so on and that respondent no.2 would have no connections or liabilities with any dealings in relation to the project.

XI. In pursuance of the PAA, the respondent no.1 issued an allotment letter and a 'welcome letter' to the complainants, dated 27.02.2013 and allotted one unit no. D-094, admeasuring 500 sq. yards, bearing Customer ID no. RC-0214 to the complainants. As per the allotment letter, respondent no. 2 directed that all future correspondence regarding the unit was to take place upon quoting the said Customer ID. Moreover, to the shock and surprise of the complainants, the

respondent no.2, through the allotment letter, allotted a plot admeasuring 500 sq. yards, which was contrary to the initial booking made by the complainants under the PAA for a plot admeasuring 300 sq. yards. That respondent no.2 did not take any prior consent or issue any letter/intimation informing the complainants of such sudden and unilateral change. However, due to the large sum of money that the complainants had already invested in the project, they were forced to accept such unilateral change and did so under protest.

XII. That the respondent no.1 addressed another letter dated 09.12.2013 to the complainants demanding further payment of Rs.28,11,250/- from them towards execution of a plot buyer's agreement. The complainants having no choice but to comply with the onerous terms of the said letter, paid the said amount for the execution of the plot buyer's agreement, vide cheque dated 01.1.2014.

XIII. That the complainants were surprised to receive another welcome and allotment letter dated 07.01.2014 from respondent no.1 allotting unit bearing no. D-089, admeasuring 500 sq. yards to the complainants, pursuant to the PAA dated 19.01.2013. The said letter bore Customer ID No. RC-0214, which was also the Customer ID for unit bearing no. D-094, allotted to the complainants through allotment letter dated 27.02.2013. Moreover, the respondent no.2 also issued fresh receipts dated 11.01.2014 for payment already made by the complainants against which the respondent had already issued receipts dated 26.02.2013. It is submitted that by issuing fresh allotment and welcome letter dated 07.01.2014, allotting an entirely different unit, i.e., unit D-089 and fresh receipt for a payment already made by the complainants against another unit, the respondent no.2 has sought to unilaterally change the number of the allotted plot, by creating a false paper trail.

Moreover, the respondent no.2 could not have adjusted payment made by the complainants, vide cheque dated 26.12.2012 and 22.01.2013, and acknowledgement receipt dated 26.02.2013.

XIV. That on 30.01.2014, the respondent no.1 executed a plot buyer's agreement with the complainants for the sale of the said unit. Thus, as per the PBA the respondent ought to have offered possession of the booked units after the expiry of 30 months from the date of its execution, i.e., by 31.07.2016. In the event it was unable to offer possession by the said date, it could have offered possession by 31.01.2017, and not any later. However, the respondent no.1 has neither offered possession, nor compensation at the rate specified in the agreement. It is pertinent that the respondent no.1 has been collecting money from the complainants since 2006 and the complainants have paid 90% of the total consideration till date.

XV. That the respondent no.2 through clause 5 as well as Annexure I of the PBA, has all along been levying a 'Preferential Location Charge' upon the complainants, without their knowledge and consent.

XVI. That the complainants have already paid 75% of the total amount payable towards sale consideration of the unit i.e., an amount of Rs.87,82,500/- from 2006 till the date of execution of the plot buyer's agreement dated 30.01.2014 and have still not received possession of the unit, as per the date mentioned in the said agreement. The complainants have also issued several communications to the respondent from time to time inquiring about the delivery of possession, including emails dated 01.07.2016, 05.02.2017, 11.02.2017, 23.04.2017, 10.08.2017, 03.11.2017, 21.11.2017, 11.01.2018, 10.03.2018, 08.05.2018 and 12.08.2018. The complainant no. 2 also

continued to send the respondent reminders regarding delivery of possession to the complainants, but to no avail.

XVII. That the complainants also visited the respondent no.1's office in the month of October 2019, to discuss the progress of the project and obtain clarity on the timeline for the delivery of possession of the unit. In the meeting the respondent no.1 informed the complainants that it had applied for the project to be registered by RERA and the same was likely to be granted within the next 15 days. The respondent no.1 further assured the complainants that the representations made and discussions held, would be given effect to by the respondent no.1. However, the respondent no.1 failed to fulfil such assurances. The respondent also admitted to the complainants that the project was being delayed but that the respondent no.1 was trying its best to complete and deliver the same to the complainants at the earliest. It is submitted that the complainants had regularly followed up with the respondent no.1 on the progress and timeline for delivery of possession of the unit, but to no avail.

XVIII. That the disputed project timelines have been substantially exceeded as a result of the respondent no.1's callous attitude. Further, the respondent no.1 has constantly taken a vacillating stand and made every possible attempt to escape its obligations and liabilities. Thus, aggrieved by the same, the complainants addressed a legal notice dated 26.11.2021 to the respondent no.1. However, despite the said legal notice, there has been no response from the respondent and has therefore, left the complainants with no other option but to file the present complaint.

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

4. The complainants have sought following relief(s):

I. Direct the respondents to refund the entire amount i.e., Rs.87,82,500/- to the complainants along with the interest at 18% per annum from the date of each payment till the date of realization(while filing the complaint the complainants are seeking possession of the unit and delayed possession interest but vide proceedings of the day dated 28.09.2023 they have requested for amendment of relief and filed an application on 11.10.2023 for amendment of relief).

II. Direct the respondents to pay legal cost incurred.

III. Direct the respondents to compensate the complainants in lieu of the mental agony & harassment their callous conduct has caused.

**D. Reply by the respondent no. 1:**

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

i. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.

ii. **That date of handover of possession has never arrived**

a. That at the outset it is submitted that there is no agreement whether express or implied, oral or written, between the complainants and the respondent to provide any goods or services and the complainants had admittedly nowhere claimed to have purchased any goods or availed any services from the respondent. It is submitted that the complainants had requested the respondent seeking investment in undeveloped agricultural land in the year 2006 in the hope of making speculative gains on the approval of the zoning plans. But since the zoning plans were not approved by the government, the complainants have sought to file this vexatious

complaint. That the respondent has not agreed to provide service of any kind to the complainants unless the plans were approved as it was merely a transaction for sale of unit. The complainants have filed the present complaint with malafide intention of abusing the process of the Hon'ble Authority for wrongful gains in the form of interest at the cost of the respondent when in reality their speculative investments have failed to give any return in present harsh real estate market conditions.

b. 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 37-D, 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 of the respondent for speculative gains. That thereafter, on 11.08.2006, the complainants have paid a booking amount of Rs. 24,90,000/- through cheque towards booking of the said project pursuant. It was also specifically clarified that a specific unit shall only be earmarked once the zoning plans are approved.

c. That further the complainants have maliciously alleged that they have paid full consideration towards the booking of the plot in the futuristic project of the respondent, while in reality they have paid an amount of Rs.53,72,500/- which is part or total consideration of the unit. It is submitted that the said payments 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 unit and execution of plot buyer's agreement.

d. That further no date of possession has ever been mutually agreed between the parties. It is submitted that as per averments made by complainants, the complainants have claimed interest from the July, 2016 which also shows that the amount claimed by the complainants have hopelessly barred by limitation.

e. 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 unit as on date. It is submitted that it is only on default in offer/handover of possession that the complainants right to claim possession/refund crystalizes.

f. 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.

g. That no date of possession was ever committed by the respondent since the project was a futuristic project which was highly reliant upon approval of zonal plans by the concerned authority and the complainants having complete knowledge of the same has willingly made speculative investments in the said project.

h. That the complainants have approached the Authority by suppressing crucial facts with unclean hands which is evident from its own complaint. Therefore, the present complaint is liable to be rejected in limine based on this ground alone.

iii. **Complainants are not genuine buyers:**

a. That the complainants are not "Consumers" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainants 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 and 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.

b. 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 of the respondent and the complainants have no intention of using the said plot for their personal residence or the residence of any of their family members and 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 unit at a future date and now since the real estate market is in a desperate and non-speculative condition, the complainants have cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent.

c. That the complainants have approached the respondents' office in June/July, 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*. It is submitted 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. It is submitted 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 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 are trying to shift the burden on the respondent as the real estate market is facing rough weather.

d. That even the sectoral location of the plot was not allocated by the respondent. The said unit at the date of booking was nothing more than a futuristic project undertaken to be developed by the respondent after the approval of zoning plans and completion of certain other formalities. A unit in a futuristic project with an undetermined location and delivery date cannot be said to be a plot purchased for residential use by any standards. Therefore, the payment made by the complainants towards the said unit cannot be said to be made towards the unit purchased for residential use instead it was a mere investment in the futuristic project of the respondent. The complainants therefore only invested in the said unit so that the same can be used to derive commercial benefits/gains.

e. That the complainants are mere investors in the futuristic project of the respondent. 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.

iv. **The complaint defies the stipulated period of limitation:**

I. That the complainants are not entitled to claim possession as claimed by the complainants in the complaint is clearly time barred. The complainants have itself not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited by the respondent which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainants cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainants had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainants is made crystal clear with the present complaint and concretes the status of the complainants as investors who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

v. **That there is no default on the part of the respondent:**

i. That further the reasons for delay are solely attributable to the regulatory process for approval of layout plan which is within the purview of the department of Town and Country Planning. The complaint is liable to be rejected on the ground that the complainants had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of the Authority and further in view of the fact that the complainants had 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 beyond the jurisdiction of the Authority and hence the complaint is liable to be dismissed on this ground as well.

ii. 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 booking is completely false, baseless and without any substantiation; whereas in reality the complainants had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking in May, 2006 was made by the complainants towards a *future potential project* of the respondent and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainants.

iii. That further the respondent has applied for the mandatory registration of the project with the RERA Authority but however the same is still pending for approval on the part of the RERA

Authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under RERA. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the RERA for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondent. This by any matter of fact be counted as a default on the part of the respondent.

iv. There is no averment in the complaint which can establish that any so called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainants while investing in a unit which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so called delay in handing over possession of the said plot. Hence the complaint is liable to be dismissed on this ground as well.

v. The respondent is owner of vast tracts of undeveloped land in the revenue estate of village Basai, Gadauli Kalan and falling within the

boundaries of Sector 37C and 37D Gurugram also known as Ramprastha City, Gurugram.

vi. 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 buyers/allottees. 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.

6. The complainants have filed the complaint against R1 to R8 in which R4 & R5 and R7 & R8 are directors of the R1 to R3 and R6 is Authorized Signatory of R1 & R2. No specific relief has been sought against R4 to R8. But the reply has been filed by R1 only. The resolution passed at the meeting of the board of directors of R3 contains the stamp of R2. The address mentioned at the board resolution and the affidavit filed by Sh. Tarun Arora, Authorized Representative of R1 is same but the role and responsibilities of R1, R2 and R3 are not distinguished and all the three respondents are associated companies having same address and hence they are jointly and severally responsible to the complainants-allottees.

7. While filing the complaint the complainants besides the respondent no. 1 to 3 and added to allow the respondent no. 4 to 8 as respondents. The counsel for the respondents moved an application on 28.04.2023 for deletion of respondent 4 to 8 from array of respondents. As per website of the MCA, the respondent no. 4 to 8 are directors of the respondent no. 1 to 3 and who are already party to the present complaint. No useful purpose would be served by keeping them as respondent no. 4 to 8. So, their names are required to be deleted from the array of the respondent no. 4 to 8.

8. 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.

**E. Jurisdiction of the authority:**

9. 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.

**E.I Territorial jurisdiction**

10. 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**

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.*

11. 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.

12. 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."*

13. 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.

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

**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

14. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the plot buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

15. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

17. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules.

**F.II Objection regarding the complainants being investors.**

18. The respondent has taken a stand that the complainants are the investors and not consumer. Therefore, they have not entitled to the protection of the Act and are 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 consumers 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 the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the plot buyer's agreement, it is revealed that the complainants are buyers and paid total price of Rs. 87,82,500/- to the promoter towards purchase of a unit in its project. 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:

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees 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 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.III Objection regarding complaint barred by Limitation Act, 1963**

20. Another contention of the respondent is that if the date of possession was to be construed in June 2016, the period of limitation has come to an end in the year June 2019. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 006000000021137 titled as ***M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others*** which provides as under:

> *"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."*

Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

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

**G.I Direct the respondents to refund the entire amount i.e., Rs.87,82,500/- to the complainants along with 18% interest from the date of each payment till its complete realization.**

21. The complainants were allotted a unit in the project of respondent "Ramprastha City", in Sector 92, 93 & 95, Gurugram vide allotment letter dated 07.01.2014 for a total sum of Rs.1,19,79,165/-. A plot buyer's agreement dated 30.01.2014 was executed between the parties and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.87,82,500/-.

22. The due date of possession as per the possession clause of the plot buyer's agreement is 30.06.2016. There is delay of 5 years 7 months and 22 days on the date of filing of the complaint i.e., 21.02.2022. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.

23. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as 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 allottee 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....."*

24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** 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 observed as under:

> *25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

25. 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 application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish 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.

26. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainants intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the 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, —*
>
> *(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 of 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)***

27. The complainants are seeking refund of the amount paid by them 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.*

28. 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.

29. 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., 14.12.2023 is **8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%.**

30. 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;"*

31. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(a) of the Act, 2016.

32. The authority hereby directs the promoter to return the amount received by him i.e., Rs.87,82,500/- with interest at the rate of 10.75% (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.

**G.II Direct the respondent to pay legal costs and compensation.**

33. The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra*** held that an allottee is entitled to claim compensation 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 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.

**H. Directions of the authority:**

34. 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 respondents /promoter are directed to refund the amount i.e., **Rs. 87,82,500/-** received by them from the complainants along with interest at the rate of 10.75% 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 given amount.

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

iii) The respondents are further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

35. Complaint stands disposed of.

36. File be consigned to registry.

**(Vijay Kumar Goyal)**
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.12.2023