

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

**Complaint no.** : 5180 of 2023  
**Date of complaint** : 07.11.2023  
**Date of order** : 21.08.2024

**1. Seema Singhal**  
**R/o:** - 21, Naval Vihar, Baghpat Road,  
Meerut, U.P-250002.  
**2. Reena Singhal,**  
**R/o:** - Plot No. 114, Sector-44,  
Gurugram, Haryana-122002.

**Complainants**

Versus

**1. M/s Ramprastha Developers Pvt. Ltd.**  
**2. M/s Ramprastha Promoters & Developers Pvt. Ltd.**  
**Both having Regd. Office at:** - Plot No. 114, Sector-44,  
Gurugram-122002.

**Respondents**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Yogesh Kumar Goyal (Advocate)  
Akansha Chugh (Advocate)

Complainants  
Respondents

**ORDER**

1. The present complaint has been filed by the complainant/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 allottees 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                         | Cannot be ascertained   |
| 2.     | Project area                                | Cannot be ascertained   |
| 3.     | Plot no.                                    | Not Provided  |
| 4.     | Plot area admeasuring                       | 300 sq. yds.<br>(Page no. 20 of the complaint)  |
| 5.     | Date of booking                             | 21.09.2006<br>(page 20 of complaint)  |
| 6.     | Allotment letter                            | Not Provided  |
| 7.     | Date of execution of plot buyer's agreement | Not executed  |
| 9.     | Possession clause                           | Not Provided  |
| 10.    | Due date of possession                      | 21.09.2009<br>[Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ] |
| 11.    | Total sale consideration                    | Rs.30,00,000/-<br>[As per BBA on page 19 of complaint]  |
| 12.    | Amount paid by the complainants             | Rs.9,00,000/-<br>[As per receipt dated 21.09.2006 on page 20 of complaint]  |
| 13.    | Occupation Certificate                      | Not Provided  |
| 14.    | Offer of possession                         | Not Provided  |

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- I. That the complainants had applied for allotment of a residential plot of 300 sq. yard through an application form in the project of the respondent no.1 at Gurugram, Haryana.
- II. That the total consideration to be paid for the residential plot was Rs.30,00,000/-, whereas the complainants have paid a total of Rs.9,00,000/- vide receipt no. 913 dated 21.09.2006 to the respondent no. 1. At the time of booking, respondent no. 1 had promised that only Rs.9,00,000/- to be paid at the time of booking and the rest of the amount will be paid at the time of possession. Further, respondent no. 1 has promised that the possession of the plot shall be given within 2 years of booking.
- III. That the complainant no. 2 wants to change her address in the records of the respondent no. 1 and meet to the staff of the respondent no. 1 and then she came to know that the respondent no. 1 and respondent no. 2 both are one only and the authorized representative of the respondent had asked to send an email regarding change of address of the complainant no. 2 on the official email id of the respondents. The complainant sent an email dated 08.08.2015 regarding the status of the project and also a change in address in the records of the respondent. The respondent had confirmed the change of address through email dated 13.08.2015 for another booked unit.
- IV. That respondent no. 1 had failed to give possession of the plot to the complainants. The complainants had met with the respondent no. 1 several times personally and also called them several time through

telephone and the respondent had time and again assured to the complainants that the possession of the plot will be given in the upcoming plotted project at Sector 37D, Gurugram. The respondent had directed the complainants to send a request email for consideration of allotment of plot in Section 37D, Gurugram. The complainants had sent a request email to the respondent no. 1 dated 05.04.2022.

- V. That the respondent no. 1 had violated the provisions of Section 18 of the Act, 2016 by making false promises and assurances about the possession of plot in residential plotted project and also not refunding the amount collected from the complainants.
- VI. That respondent no. 1 had violated the provisions of Section 13 of the Act, 2016 read with Rule 8 of the Rules, 2017. The respondent had never sent a copy of the agreement to the complainants. Further no agreement has been executed between the parties, so there is no binding effect on the complainants. Hence, all the collected amount from the complainants should be refunded along with interest as per the Act, 2016.

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

4. The complainants have sought following relief(s):
- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

**D. Reply by the respondents:**

5. The respondents have contested the complaint on the following grounds:
- i. That the complainant has merely filed a money receipt which is not acceptable as a valid document and does not create any right in favour of the complainant to invoke the provision of the Act, 2016. It is

- submitted that the complainant has not filed any documents to prove that the complainant is an allottee within the definition of the Act, 2016.
- ii. That the complainant had approached the respondent in the year 2006 showing an interest to participate in one of the future potential projects of the respondent. It is pertinent to mention that the above-named future potential project was indeterminate at the point of time when the money was paid by the complainant merely to ensure that she is given priority to participate in any project that gets the approval of the competent authority. It is submitted that the complainant had the option at all times to recall her money even if the approval had come through, in the event, she was not willing to participate in such projects. Hence, she cannot be allowed to claim interest which has no legal or contractual basis.
  - iii. That no date of possession has ever been mutually agreed between the parties. That in absence of any document in the nature of a builder buyer agreement, which contains several terms and conditions including the date of possession and the consequences of default, no date of possession can be said to have been mutually agreed between the parties.
  - iv. That the respondent is in the process of obtaining the approvals and shall bring the plots into existence on such approval and shall offer the possession of the same but as on date, the complainant has no vested right to demand possession of plot.
  - v. That the project of the respondent was delayed due to revision of zoning plans by the state authorities, incorrect depiction of village

- boundary lines, deviation in the road, passing of HT lines over the project, delay on part of government authorities in granting necessary approvals etc. and the respondent has no control over the same.
- vi. That the complainant is not an allottee and hence the proceedings are merely in the nature of recovery which is not maintainable before this Authority. That even if it is assumed that such a claim in the nature of money is maintainable, the claim is hopelessly barred by limitation filed after the expiry of 3 years from the date of payment.
- vii. That the objective of the RERA Act is not only to safeguard the interests of the allottees but also to ensure the healthy promotion of the real estate sector and to protect the interests of the several stake holders involved in such sector. Therefore, in the abovesaid the present complaint is not maintainable in its present form and ought to be dismissed with exemplary costs upon the complainant.
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.

**E. Jurisdiction of the authority**

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, 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, 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)(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.

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

**F.I Objection regarding entitlement of complainants to the protection of Act, 2016.**

10. The respondents have taken a stand that the complainants do not fall under the definition of allottee. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act.
11. The authority observes that as per Section 31 of the Act, 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 documents placed on file, it is revealed that the complainants are buyers as they have paid a sum of Rs.9,00,000/- to the promoter towards purchase of a plot in its project vide receipt dated 21.09.2006, but the respondents have failed to execute any buyer's agreement and also no updates were given by the respondents to the complainants about the status of the project and they were left clueless about the implementation of the project as a whole. 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 existing 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. The Authority is of view that the document/receipt so issued in favour of a person can be termed as an agreement for sale to put the developer before RERA Authority, compelling it to fulfil its obligations against the holder of that document. The promoter is duty bound to explain the reasons for which it 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). Thus, the contention of promoter



regarding entitlement of complainants to the protection of Act, 2016 stands rejected.

**F. II Objection regarding complaint being barred by limitation**

12. The counsel for the respondents has further raised an objection that the complaint is barred by limitation as the complainants have made the payment back in 2006. The objections to the same were to be raised in a time bound manner. Hence, the complaint is not maintainable on the above-mentioned ground.
13. On consideration of the documents available on record and submissions made by the party, the authority observes that vide receipt dated 21.09.2006, the respondent/promoter had promised to allot a 300 sq. yds. plot to the complainants in future potential project of the respondent. However, despite receipt of an amount of Rs.9,00,000/- towards the said allotment back in 2006, the respondent-promoter has failed to allot a specific plot no. to the complainants and also no effort has been made by it to get the plot registered in their name till date. As the respondents have failed to handover the possession of the 300 sq. yds. plot to the complainants and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduced as under for ready reference: -

*22. Continuing breaches and torts-*

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

14. Further, the law of limitation is, as such, not applicable to the proceedings under the Act and has to be seen case to case. Thus, the

objection of the respondents w.r.t. the complaint being barred by limitation stands rejected.

**F.III Objections regarding the circumstances being 'force majeure'**

15. The respondents have contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals, passing of an HT line over the layout, road deviations and depiction of villages etc. which were beyond the control of respondent. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the 300 sq. yds. plot was to be offered by 21.09.2009. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Furthermore, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Hence, all the pleas advanced in this regard are devoid of merits. Therefore, the respondents cannot take benefit of its own wrong and the objection of the respondents that the project was delayed due to circumstances being force majeure stands rejected.

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

**G. I Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.**

16. The complainants submit that vide receipt dated 21.09.2006, they had paid an amount of Rs.9,00,000/- to the respondents/promoter and the same was confirmed by the respondent and promised the allotment of a plot admeasuring 300 sq. yards. in any of the future project of the respondent company. Despite repeated follow up by complainants with the respondents/promoter vide telephonic conversations and email

dated 12.08.2015 neither any allotment letter was issued in respect of the aforesaid plot, nor the respondents have finalized anything regarding specifying the said project till date. The complainants due to the neglectful behaviour of the respondents filed the present complaint pleading for refund along with interest before this authority.

17. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondents/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."*

18. 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 hereby expressly declared to be void."*

19. 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. Even in some cases, the builder accepted more than 50 lacs either in cash or through cheque and promising to allot an apartment/plot in the upcoming or existing projects and then vanishing or not taking any further steps with regard to either allotment of the unit of the property in any project or refunding the amount received. The holders of those receipt/allotments are harassed a 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.

20. The document/receipt so issued in favour of a person can be termed as an agreement for sale to put the developer before RERA Authority, compelling it to fulfil its obligations against the holder of that document. The promoter is duty bound to explain the reasons for which it 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.
21. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) 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)**

22. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest 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.

23. 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.
24. 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., 21.08.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. In the instant matter even after lapse of more than 17 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter- se parties. Therefore, the due date of possession cannot be ascertained, and the complainants cannot be expected to wait endlessly for the plot/unit 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 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....."*

26. 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 respondents are not communicating the same to the complainants/allottee. Hence, it is violation of the Act, and shows its unlawful conduct.
27. 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.*
28. In view of the above-mentioned reasoning, the date of booking is to be treated as provisional 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 plot comes out to be 21.09.2009.
29. The Authority, after considering the facts stated by the parties and the documents placed on record is of the view that the complainants cannot be expected to wait endlessly for the allotment of plot and are well

within their right for seeking refund under section 18(1) of the Act, 2016.

30. 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 plot in accordance with the terms of provisional allotment letter or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the allotment of 300 sq. yards plot with interest at such rate as may be prescribed.
31. 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 respondents is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @11.10% 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*.

#### **H. Directions of the authority**

32. 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 is directed to refund the amount i.e., Rs.9,00,000/- received by it from the complainants along with interest at the rate of 11.10% 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.
  - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
33. Complaint stands disposed of.
34. File be consigned to registry.

**(Ashok Sangwan)**  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.08.2024

**HARERA**  
**GURUGRAM**