

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

Complaint no.	4572 of 2023
Date of filing:	03.10.2023
Date of decision	13.09.2024

1. 2.	Sh. Lalit Kumar Grover Smt. Soma Lalit Grover R/O: - 404, Genex Tower, At-14, Omaxe Heights, Sector-86, Faridabad	Complainants
Versus		
	M/S Ramprastha Promoters And Developers Private Limited Regd. Office At: Plot No -114, Sector-44, Gurugram	Respondent

CORAM:		
	Shri Vijay Kumar Goyal	Member
APPEARANCE:		
	Complainant through VC	Complainant
	Ms. R Gayatri Mansa	Respondent

ORDER

1. The present complaint dated 03.10.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	PRIMERA Sector 37-D, Gurugram
2.	Project area	13.156 acre
3.	Nature of project	Residential
4.	RERA registered/not registered	289/2018 dated 23.10.2018
5.	DTCP license no. & validity status	12 of 2009 Dated 21.05.2009 Valid up to 20.05.2024
6.	BBA	21.08.2014 (pg. 16 of complaint)
7.	Unit No.	602, tower B, 6 th floor (pg. 21 of complaint)
8.	Unit Area admeasuring	1720 sq. ft. (pg. 21 of complaint)
9.	Possession Clause	15(A) Schedule for Possession <i>The developer shall endeavour to complete the construction of the said apartment within a period of 54 months from the date of building plans by office of DGTCP, the allottee agrees and understands that developer shall be entitled to grace period of hundred and twenty (120) days, for applying and obtaining the occupation certificate in respect of the group</i>

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		<i>housing complex.</i> (pg. 31 of complaint)
10.	Building plan	25.04.2013 (Taken from website of RERA)
11.	Due date of possession	25.10.2017 (Calculated 54 months from the sanction of building plans without grace period) 22.02.2018 (Calculated 54 months from the sanction of building plans plus Grace period of 120 days is included)
12.	Total consideration	₹ 96,44,073/- (As per SOA dated 11.04.2019 at page 94 of complaint) Rs. 1,04,06,632/- (As per schedule of payment at page 44 of complaint)
13.	Total amount paid by the complainant	₹ 96,44,073/- (As alleged by complainant and As per SOA dated 11.04.2019 at page 94 of complaint)
14.	Occupation Certificate	05.04.2023 (DTCP Website)
15.	Offer of possession	10.04.2023 (As placed in the yellow file)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainants are a law abiding Non-Resident Indians currently living in Spring, Texas, USA .The complainant duly believed the statement of the representative of respondent and applied with application (priority) no. 207 dated 16.10.2012, and subsequently a unit bearing no. 602 was allotted in tower-B having the super area of 1720 sq. ft. along with two separate covered car parking's and pro rata share in the common area of the project Primera, luxury group housing project located at Sector-37 D, Gurugram .The complainants duly cleared the total outstanding consideration of Rs.96,44,0731/- including all other charges.
- II. That the complainants without making any kind of delay always deposited the amount requested as per the payment plan/schedule opted by the complainant immediately on receipt of letters from the respondent which has also been admitted and acknowledged by the respondent's company officials. Despite in some instances the receipt dates showing a later date than the amount deposited or credited in the respondents account much earlier, however, the amount exactly matches with the account statement.
- III. That the apartment buyer agreement, which was executed between the complainants and the respondent company on 21.08.2014 the total sale consideration of Rs.1,04,06,632/-including of Fixtures & Fittings, Electricity connection charges, and all other charges (except for registration and stamp duty) and again the respondent assured the complainants that they have taken all necessary sanctions for the completion of the aforesaid project.
- IV. That as per one of the terms and conditions of the said agreement to sell in para no.15.(a) it is clearly mentioned that regarding the possession of the said unit it was agreed and settled that the possession of the said unit shall be handed over to the complainants within a stipulated period of 54

months from the date of approval of building plan. Hence, from the above said clause as mentioned in apartment buyer agreement, the respondent company was duly bound to handover the physical possession of the above said unit/flat to the complainant positively up to 25.07.2017, and it was told by the authorized person of respondent that till date they have never delayed the completion of any project they have in their hand.

- V. That on account of not constructing the above said unit within the stipulated period of 54 months, the complainants kept on requesting the respondent officials to complete the construction of the said unit as early as possible and handover the peaceful possession of the above said unit. The respondent has failed to hand over the physical possession of the above said unit to the complainant till date.
- VI. That, till date the complainants are running from pillar to post to get the physical possession of their unit from the respondent had failed to complete the said project on the assured time. From the above said acts and misdeeds of the respondent, it is crystal clear that despite of request of the complainant to give him physical possession of the unit flat, thereby misappropriating the huge hard-earned money of the complainants.
- VII. That the respondent also sent an email on 14.12.2021 assuring to settle the delayed possession amount adjustment during possession and subsequently stopped responding. Similar commitments were made verbally over the phone by the respondents' representatives during May 2023, however, instead of adjusting the account statement with delay possession charges, holding charges email with additional email was sent.
- VIII. That the act and conduct of the respondent has also snatched the mental peace of the complainants when they received a demand in the email on

10.04.2023 without any formal demand letter which is illegal and unjustified and required to be cancelled and the complainants are already ready to adjust the genuine and actual remaining amount of the total sale consideration of above said unit against the delay possession charges to be recovered from the respondents.

- IX. That, the complainants tried to approach the respondent many times and requested with folded hands to hand over the physical possession and to cancel the said reminder and issue fresh demand letter with of actual and genuine balance amount of sale consideration of the said unit/flat. But the respondent did not even bother to respond the buyer and when the complainant asked to the respondent about the delay possession charges, the respondent threaten to the complainants to cancel the said unit. In addition, as the money was remitted from USA, the complainants have also suffered a huge foreign exchange currency depreciation loss. On the several requests of the complainants, the respondent company is not giving any heed to the genuine request of the complainants and instead now even demanding illegal holding charges.
- X. That as the respondent failed to discharge to complete and handover the possession of the allotted unit to the complainants within the stipulated time and thus they have cheated the complainants to invest their hard earn money on believing upon their false assurances.

C. Relief sought by the complainants:

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

- I. Direct the respondent to pay interest on paid amount to the complainants till the actual date of handover.
- II. Direct the respondent to handover the physical possession of the said unit to the complainants with the promised quality and specifications.

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III. Direct the respondent to cancel the illegal demand letter dated 10.04.2023 and 05.06.2023.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent :

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

I. That the respondent has obtained occupation certificate for the project "primera" vide Memo no. ZP-695/PA(DK)/2023/9616 dated 05.04.2023 matter and accordingly, an intimation of the same has also been issued to the complainants herein. Further the present complaint is not maintainable being unsupported by an affidavit. The complainants herein are a Non-Resident Indians and admittedly is a resident of 24530 Gosling Road, Apartment 1513, Spring Texas-77389, USA. In a case of a non-resident Indian, attaching an apostille along with the complaint is of mandatory nature and in absence of which, the present complaint is not maintainable on the grounds of procedure as well.

II. That the default in delivery of possession of property is due to default on the part of the complainants as they are defaulters, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the statement of account.

III. That it is due the lackadaisical attitude of the complainants alongwith several other reasons beyond the control of the respondent as cited by the respondent which caused the present unpleasant situation. That it is due to the default of the complainants, the handover of possession could not have been carried out.

- IV. That even all through these years, the complainants have never raised any dispute regarding delay in possession or any other aspect. Apparently, the complainants have been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property. If any objections to the same were 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. Further the complainants herein is not entitled to claim dpc as claimed by the complainants in the complaint is clearly time barred. The complainants herein 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.
- V. That the respondent had to bear with the losses and extra costs owing due delay of payment of instalments on the part of the complainants for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavoured to serve the buyers with utmost efforts and good intentions. Further in a desperate attempt to bring forth a legal action against the respondent the complainants herein have generated certain fabricated documents in order to support their false contentions. No default has occurred on the part of the respondent.
- VI. That further the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainants had indirectly raised the question of approval of zoning plans which is beyond the control 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 this

Hon'ble Tribunal and hence the complaint is liable to be dismissed on this ground as well.

- VII. That the respondent has applied for the mandatory registration of the project with the RERA Authority and has successfully received registration vide Registration No. Memo No. HRERA/GGM/2018/21 dated 23.08.2018 project "PRIMERA". Even in such adversities and the unpredicted wrath of falling real estate market conditions, the respondent have 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 and the respondent had completed the project, successfully obtained the occupation certificate and has offered possession of the unit.
- VIII. 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. The delay has occurred only due to unforeseen and un-tackle able circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the unit for which respondent cannot be held accountable. However, the complainants despite having knowledge of happening of such Force Majeure eventualities and despite agreeing to

extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondent with a wrongful intention to extract monies.

7. 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:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection 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

9. 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

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

Section 11

.....
(4) 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 complainant at a later stage.

F. Findings on objections raised by the respondent

F.1 Objections regarding the circumstances being 'force majeure'.

12. The respondent 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, no document in support of its claim has been placed on record by the respondent. Hence, all the pleas advanced in this regard are devoid of merits. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project as the promoter is to factor in all such procedural delays and ground realities while fixing the timelines for delivery of the project in the agreement executed with the buyers. Therefore, the respondent cannot take benefit of its own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

F.II Objection regarding that the present complaint is not maintainable being unsupported by an affidavit.

13. The respondent took a plea that the complainants are Non-Resident Indians and are admittedly the resident of Texas ,USA .Whereas the affidavit filed on record is only signed by the first complainant i.e Mr. Lalit Kumar Grover whereas signature of both the complainants is necessary to pursue with the present complaint.

14. However , as per the documents available on record the Authority observes that the complainant no. 2 i.e Soma Lalit Grover has filed General Power of Attorney in the favour of Lalit Kumar Grover i.e complainant no. 1 and has given all rights to prosecute or defend any complaint or proceedings under the said declaration . Also, the complainant no. 1 has filed the present complaint and submitted his affidavit duly notarized. In view of the above, said objection raised by the respondent stands rejected due to lack of merits.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to pay interest on paid amount to the complainants till the actual date of handover.

G.II Direct the respondent to handover the physical possession of the said unit to the complainants with the promised quality and specifications.

15. The above-mentioned reliefs sought by the complainants are taken together being interconnected.

16. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges along with interest on the amount paid. Clause 31 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

15 Schedule for possession

The developer shall endeavour to complete the construction of the said apartment within a period of 54 months from the date

of building plans by office of DGTCP, the allottee agrees and understands that developer shall be entitled to grace period of hundred and twenty (120) days, for applying and obtaining the occupation certificate in respect of the group housing complex.

17. The buyer's agreement was executed between the parties on 21.08.2014. The due date of possession of the unit as per clause 15(A) of the buyer's agreement, is to be calculated as 54 months from the date of sanction of building plans by office of DGTCP with a grace period of 120 days for applying and obtaining the occupation certificate in respect of the group housing complex. The due date of possession is to be calculated from 54 months from the date of approval of building plans by office of DGTCP and the said grace period of 120 days is allowed as per the order of the Hon'ble Tribunal in appeal no. 433 of 2022 stating and the same is quoted above:-

"It is also well known that it takes time to apply and obtain occupation certificate from the concerned Authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate"

18. In view of the above-mentioned reasoning, the due date is calculated from clause 15 of the buyer's agreement. Therefore, the due date of handing over of the possession of the plot comes out to be 22.02.2018.

19. Admissibility of delay possession charges at prescribed rate of interest: Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. 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.

21. 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., 13.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

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

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

Explanation. —For the purpose of this clause—

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

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

24. On consideration of the documents available on record and submissions made regarding contravention of 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 agreement. By virtue of clause 54 months from the date of building plans by office of DGTCP with a grace period of 120 days for applying and obtaining the occupation certificate in respect of the group housing complex.. For the reasons quoted above, the due date of possession comes out to be 22.02.2018.

25. The respondent has obtained the occupation certificate on 05.04.2023. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 21.08.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.08.2014 to hand over the possession within the stipulated period.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the

competent authority on 05.04.2023. The respondent offered the possession of the unit in question to the complainants on 10.04.2023. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 22.02.2018 (Inadvertently mentioned in the proceeding of the day as 25.10.2017 being without inclusion of grace period) till the date of offer of possession plus two months.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. from the due date of possession i.e., 22.02.2018 till the date of offer of possession i.e 10.04.2023 plus two months i.e 10.06.2023 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.III Direct the respondent to cancel the illegal demand letter dated 10.04.2023 and 05.06.2023.

28. Vide proceeding dated 13.09.2024 the complainant stated that the respondent raised demands and the same were not raised as per the buyer's agreement. As per the buyer's agreement demand of Rs. 2,38,000/- should be made but the respondent has raised a demand of Rs. 8,00,000/- . Also the respondent has raised three demands at the time of offer of possession , out of

which two of them were not raised earlier by the respondent and while raising 3rd demand, amount of earlier two demands have been clubbed which is not justified as no demand notice for the same was issued. The complainant also stated that there was no demand raised before offer of possession and the complainants have paid EDC, IDC and PLC in full.

29. The respondent stated that as per statement of account the complainants were supposed to make payments along with PLC. Hence, the respondent shall make the demands as per the buyer's agreement dated 21.08.2014. Therefore the respondent - builder is directed not charge anything from the complainants which is not a part of the buyer's agreement.

H. Directions of the Authority:

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest on the paid-up amount by the complainants at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 22.02.2018 till the date of offer of possession i.e 10.04.2023 plus two months i.e 10.06.2023 as per section 18 (1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondent is directed to raise demands as per the buyer's agreement and to issue revised statement of account after adjusting delayed possession charges. If any amount remains to be same, the same shall be paid by the complainants.
- iii. The respondent shall not charge anything from the complainants which is not a part of the buyer's agreement.
- iv. The respondent is directed to handover the physical possession of the allotted unit complete in all aspects as per specifications of buyer's

agreement within 2 weeks from date of this order i.e 13.09.2024 and the complainants will take the same as per section 19(10) of the Act of 2016.

- v. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- vi. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/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 delayed possession charges as per section 2(za) of the Act.

31. Complaint stands disposed of.

32. File be consigned to registry. सत्यमेव जयते

Dated: 13.09.2024



HARERA
GURUGRAM

V.I. 
Vijay Kumar Goyal
Member
Haryana Real Estate
Regulatory Authority,
Gurugram