

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

Date of decision: 20.08.2024

S.No.	Case No.	Case title	APPEARANCE
1.	CR/268/2022	Shashi Kumar Garg V/s M/s Ramaprastha Promoters & Developers Private Limited	Shri Harshit Batra, Advocate And Shri Sougat Sinha, Advocate R Gayathri Manasa, Advocate
2.	CR/234/2022	Laxmi Narayan Verma V/s M/s Ramaprastha Promoters & Developers Private Limited	Shri Harshit Batra, Advocate And Shri Sougat Sinha, Advocate R Gayathri Manasa, Advocate

CORAM:Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan**Chairman**
Member
Member**ORDER**

1. This order shall dispose of the both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed *inter se* between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project

being developed by the respondent/promoter i.e., M/s Ramaprastha Promoters & Developers Private Limited. The issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession and delay possession charges.

3. The details of the complaints, reply to status, plot no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		Not Available				
Possession Clause: - Not Provided						
Sr. No	Complaint No., Case Title, and Date of filing of complaint	Plot No./ area	Date of execution of plot buyer's agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/268/2022 Shasi Kumar Garg V/s M/s Ramprastha Developers Private Limited DOF- 31.01.2022 REPLY- 29.04.2022	300 sq. ft. [as per payment receipt] Not allotted	Not Executed	31.07.2009 [Calculated from payment of receipt as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)]	TSC: - Not available AP: Rs.19,50,000 /- as per receipt no.585 dated 31.07.2006 at page 14 of complaint.	Allotment of 300 sq. yards plot, Allocation of plot/Possession along with delayed possession charges and to execute conveyance deed

2.	CR/234/ 2023 Laxmi Narain Verma V/s M/s Ramprastha Developers Private Limited DOF- 21.01.2022 REPLY- 25.04.2022	300 sq. ft. [as per payment receipt] Not allotted	Not Executed	31.07.2009 [Calculated from payment of receipt as per Fortune Infrastruct ure and Ors. vs. Trevor D'Lima and Ors. (12.03.201 8 - SC)]	TSC: -Not available AP: - Rs.19,50,000 /- as per receipt no.581 dated 31.07.2006 at page 14 of complaint.	Allotment of 300 sq. yards plot, Allocation of plot/Posse sion along with delayed possession charges and to execute conveyanc e deed
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Note: In the table referred above certain abbreviation have been used. They are elaborated as follows:

Abbreviation	Full Form
DOF	Date of filing of complaint
TSC	Total sale consideration
AP	Amount paid by the allottees(s)

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/268/2022 titled as Shashi Kumar Garg Vs. M/s Ramaprastha Promoters & Developers Private Limited** are being taken into

consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

A. Unit and project related details

6. 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:

CR/268/2022 titled as Shashi Kumar Garg Vs. M/s Ramaprastha Promoters & Developers Private Limited

S. No.	Particulars	Details
1.	Project name and location	Not Available
2.	Project area	Cannot be ascertained
3.	Plot no.	Not Allotted
4.	Plot measuring	300 sq. yds. (As per receipt information at page no. 14 of complaint)
5.	Date of allotment letter	Not executed
6.	Date of execution of plot buyer agreement	Not executed
7.	Total consideration	Not submitted by the parties
8.	Total amount paid by the complainant	Rs.19,50,000/- (As per receipt no.585 dated 31.07.2006 at pg. 14 of the complaint)
9.	Due date of possession	Cannot be ascertained
10.	Occupation Certificate	Not obtained
11.	Offer of possession	Not offered

B. Facts of the complaint

7. The complainant has made the following submissions: -

- i. That in 2006, the respondent was blazoning itself as one of the supreme real estate developers in the market, expansion with a number of real estate projects with high prospects of great returns. It predominantly advertised and assured of its fine development status, speedy procurement of the necessary licenses and permissions required from the competent authority for its plotted development, timely delivery of possession without any delays and the stellar quality of its developments.
- ii. That respondent was completely engrossed with its blazoning gimmick through various authorised representators. The complainant was made to believe that the proposed plots of the respondents are reserving fast owing to the gigantic future benefits being perceived by the many allottees and that the respondent is taking advance bookings and shall be sold out of all its plots soon.
- iii. That subsequently, while relying on the assurances, promises, representations and warranties of the respondent, the complainant decided to make a registration of 300 sq. yards plot in the future potential projects with Ramprastha Promoters Developers Pvt. Ltd after making a payment of Rs.19,50,000/- vide cheque bearing no. 504467 dated 04.05.2006 at their registered office at Shop No 10, C-Block Market, Vasant Vihar, New Delhi in the presence of all the directors of the respondent company. The complainant made total payment of Rs.19,50,000/- to the respondent, on receipt of the aforesaid payment the respondent issued a payment receipt bearing no.585 dated 31.07.2006.

- iv. That the respondent promised that it shall make an allotment in favour of the complainant. That in lieu of the same, the complainant, time and again visited the office of the respondent to enquire about his allotment, however, was always told that the allotment process is being undergone and the same shall be made soon. That the respondent, intentionally and wilfully kept on delaying the allotment of the complainant.
- v. That the gigantic promises made by the respondent with respect to the developing status, the speedy procurement of licenses and delivery of possession all turned be bogus and a sham with the actual intent to misappropriate monies from the innocent buyers.
- vi. That since almost 16 years, the respondent has wrongfully enjoyed a huge sum of money paid by the complainant with a desire of getting the unit in his name for his personal and domestic use. That the promises, assurances and warranties made by the respondent were broken in the most unlawful and illegal manner.
- vii. That the respondent has intentionally caused wrongful gains to itself and wrongful losses to the complainant when in fact the complainant has deposited his hard-earned money by being ensnared in the false lucrative and sham promises of the respondent, when in fact, the respondent never intended to make any allotment in favour of the complainant.
- viii. That the respondent has acted in the most unlawful and illegal manner and has violated many provisions of the Act.
- ix. That the respondent had the obligation of executing an agreement for sale with the complainant. That it is well established that the relationship between the respondent builder and the complainant

allottee, being commercial in nature, is fastened by the contractual terms and conditions, which, the respondent has wilfully escaped. That such obligation remained since the booking of the unit, as under the terms of the Indian Contract Act, 1972 which categorically require the ascertainment of the relationship between the parties and the general market practice of executing and agreement for sale for the future transfer of property, however, The respondent has failed in living up to such obligations and has been in violation of the same.

- x. That thereafter, the implementation of the Act followed with crystallising the obligations of the respondent builder, however, since March 2016 (i.e., the date of passing of the Act), the respondent has been in constant default as it did not proceed with the allotment and the execution of the Agreement despite stringent obligations being derived from the sections 11(3), 11(4) and 13(2) of the Act. That at this juncture, it needs to be noted that allotment is considered to be a pre-requisite, which is followed by execution of the agreement, as is evident from the below mentioned provisions of the Act:

11(3). The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:--

- (a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;
- (b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

11(4)(a). 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

13. (1) *A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*

(2) *The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.*

- xi. That the respondent has gravely violated the same by not making any allotment in favour of the complainant or executing any agreement for sale, either before or after the implementation of the Act.
- xii. That it has been almost 16 years since the respondent has been wrongfully enjoying the money of the complainant including the returns and profit over the gigantic sum
- xiii. That it needs to be additionally noted that in the present case, since the exact location of the unit is unknown, the complainant is entitled to get a plot of his own choice of the same area as booked on the prevalent market rates, without any premium or any additional charge.

- xiv. That the malafide conduct of respondent has made the complainant allottee undergo years of harassment, mental trauma and financial distress, for which, the respondent is ought to be made answerable, deliver the possession of the Unit upon the satisfaction of the complainant, pay the delayed payment charges and execute the conveyance deed.
- xv. That the complainant reserves his right to approach the Hon. Adjudicating Officer for seeking compensation for the various malafide, unlawful and wrongful acts and conduct of the respondent.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- i. To allot a unit to the complainant of 300 sq. yrds. or otherwise, to the satisfaction of the complainant with respect to the location and the cost of the unit/plot.
 - ii. Direct the respondent to pay interest for every month of delay at prescribed rate of interest from after 3 years of the booking receipt, being a reasonable time and hence accordingly pay interest at the prescribed rate from 31.07.2009 till the actual delivery of possession.
 - iii. To adjust the delayed possession charges against the remaining amount to be paid against the unit.
 - iv. To pay the remaining delayed possession charges after adjustment as per para 3 of the relief, if any
 - v. To execute a conveyance deed as per section 17 of the Act, in favour of the complainant.
9. 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:

10. The present complaint has been filed by the complainant against the respondent namely i.e., M/s Ramprastha Promoters and Developers Private Limited as mentioned in proforma-B as well as memo of parties and the reply has been filed by M/s Ramprastha Promoters and Developers Private Limited only instead of M/s Ramprastha Developers Private Limited. However, as per record, the payment receipts were issued by M/s Ramprastha Developers Private Limited only whereas, no objection w.r.t impleadment of M/s Ramprastha Developers Private Limited in the present complaint as a necessary party has been raised by it while filing the reply. Further, respondent i.e., M/s Ramprastha Promoters and Developers Private Limited in the para (iii) of its reply states that "complainant has approached the respondent in the year 2006 to invest in undeveloped agricultural land in one of the futuristic projects of respondent". The Authority observes that the M/s Ramprastha Promoters and Developers Private Limited is the related company of M/s Ramprastha Developers Private Limited. Therefore, in view of the admitted liability by the M/s Ramprastha Promoters and Developers Private Limited in the reply was taken on record and arguments heard. The respondents have contested the complaint by filing reply dated 29.04.2022 on the following grounds:

- i. That the present case is nothing more than a sheer abuse of process of law on the face of it by the present complainant with the sole motive of extracting huge amount of interest from the respondent which itself manifests the malicious intent of the present complainant.
- ii. At the outset it is submitted that there is no agreement whether express or implied, oral or written, between the complainants and the respondent herein 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. That the complainant had approached the respondent and made inquiries regarding future projects of the respondent. That the complainant was categorically informed there is no plot available since the zoning plans have not been approved. The complainant had voluntarily sought to advance money to the respondent in anticipation of future approval and in the hope of making speculative gains. But since the zoning plans have not been approved by the government till date, the complainant has sought to file this vexatious complaint which is completely unsubstantiated and is bereft of any material documentary evidence. The respondent not agreed to provide any service whatsoever to the complainant since the plans were not approved by the competent authority and the complainant has not provided any documents to prove that any such promise was ever made by the respondent. The complainants have filed the present complaint with malafide intention of abusing the process of this Hon'ble Authority for wrongful gains in the form of interest at the cost of the respondents when in reality their speculative investments have failed to give any return in present harsh real estate market conditions.

- iii. That the complainant has 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 92, 93 and 95, 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 04.05.2006, the complainants have paid a booking amount of Rs.19,50,000/- towards booking of the said project pursuant to which a receipt bearing no. 585 was issued to the complainant. It was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.

- iv. That the complainants herein have resorted to filing a complaint solely on the basis of false claims and baseless accusations against the respondent while concealing its own defaults and laches for which the complainants are solely liable.
- v. That 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 only paid an amount of Rs.19,50,000/- which is the initial booking amount of the plot. It is submitted that the said payments were not full and final payments as only basic amount is sought to be made at the booking stage which was done in 2006 and further payments inter alia towards government dues on account of EDC/IDC charges are payable at the time of allotment of plot and execution of plot buyer agreement.

- vi. That the complainants have also never approached the respondents after 2006 for the completion of the formalities and payment of balance consideration due to which the no plot buyer's agreement was executed in favour of the complainants.
- vii. That the definitive plot buyer's agreement would contain the details of the plots, date of possession and the rights and obligations of the buyers and the developers provided the zonings plans have been approved and in the absence of a plot buyer's agreement no rights are vested in favour of the complainants to claim handover and possession of any plot whatsoever.
- viii. That the complainants were obligated to approach the respondent with original booking receipts and complete the formalities for the execution of a plot buyer's agreement. However, the complainants have never approached the respondent for the same after the booking in 2006. In the absence of a plot buyers' agreement, no rights are vested in favour of the complainants to compel the respondent to sell plot under the garb of receipt of payment after a lapse of 15 years by when such payments have become barred by limitation.
- ix. That no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the Authority which is within the knowledge of the complainants herein. It is submitted that as per averments made by

complainants, the complainants have claimed interest from July 2009 which also shows that the amount claimed by the complainants have hopelessly barred by limitation.

- x. That no documents have been submitted by the complainants in support of the time for possession and as per the complainants' own averments the plot was required to handover in three years period i.e., in July 2009.
- xi. There is no obligation on the part of the respondents to allot or handover any plot to the complainants since the complainants have failed to provide any evidence of execution of plot buyer's agreement in favour of the complainants.
- xii. 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.
- xiii. That further that the complainants were never interested in fulfilling the necessary formalities towards booking of the said plots. Neither the complainants have made any further payment for plot as such in Ramprastha City nor did they submit any application for the same. It is apparent that the complainants never turned up for the completion of the formalities.
- xiv. The booking did not fructify and proceed to the stage of execution of plot buyer's agreement due to the complainants' own failure to pay the

full consideration towards purchase price of the said plot and complete the formalities.

- xv. Further it is pertinent to mention herein that no date of possession was ever committed by the respondent since the project was a futuristic project and the complainants have knowingly made speculative investments in the said project.
- xvi. 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 plot 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. That it is submitted herein that the complainants having purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said futuristic undecided plot and therefore, the present complaint being not maintainable and must be dismissed in limine.

xvii. That complainants have approached the respondents' Office in March/April 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.

- xviii. That the present complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of consumer protection Act or the RERA. The present complainant is only an investor in the present project who has purchased the present property for the purposes of investments/commercial gain. The present complaint is a desperate attempt of the complainant to harass the respondents and to harm the reputation of the respondents.
- xix. Further the complainant herein is not entitled to claim possession as claimed by the complainant in the complaint is clearly time barred. The complainant has 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 complainant 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 complainant 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. If at all, the complainant 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 complainant is made crystal clear with the present complaint and concretes the status of the complainant as an investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

xx. That it is evident that the complainants have approached the Hon'ble 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.

xxi. All other averments made in the complaint were denied in toto.

11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

12. 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

13. 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

14. 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.

15. 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. Objections raised by the respondent

F.1 The complaint is not maintainable for the reason that complainant is not an allottee as no allotment of unit plot was done in favour of the complainant.

16. The respondent has averred that the present complaint is not maintainable for the reason that complainant is not an allottee, as no allotment of unit was made in favour of the complainant and the registration was an expression of interest towards the upcoming project of the respondent. For adjudicating upon this, it is important to refer to the definition of "allottee" as provided in Section 2(d) of the Act. Said provisions are:

"Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as leasehold) or be, has on to whom a plot whether as freehold or leasehold otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

17. On bare perusal of the definition of "allottee", it is evident that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter. Upon careful perusal of documents on record, it is revealed that the complainant had paid a sum of Rs.19,50,000/- for purchasing a plot admeasuring 300 sq. yards in future project of respondent. The fact that the multiple payments were received by the respondent against a 300 sq. yards plot from the complainant clearly shows that there was very much an agreement to sell the 300 sq. yards with the complainant. In the present case, the complainant is aggrieved by the act of non-compliance of this part of the contract by the respondent. Hence, objection of the respondent that complaint is not maintainable stands rejected.

F.II Relief sought by the complaint under section 18 is not maintainable as there is no agreement of sale executed between the parties.

18. The respondent raised another objection that complaint is not maintainable as there is "no agreement to sale" executed between the parties. Mere fact that an allotment letter specifying a unit no. was not issued to complainant does not mean that they were not an allottee of the respondent. Once respondent has accepted the multiple payments from complainant for purchase of a plot in his project, it was the obligation of respondent to allot them a unit no. within a reasonable time. Failure on his part to do so will not affect the rights of applicant as an allottee.
19. Even a receipt which specifies the details of unit such as area of the plot, price etc., booked by complainant will be treated as agreement for selling the property. The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement with respect to agreement entered between the allottee and the promoter before RERA Act of 2016 coming into force. Accepting the payment towards a unit in present and future project shows there was a meeting of minds that the promoter will give possession in any present or future project developed by respondent. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly shows that the complainant booked a plot in respondent's future project. Accordingly,

contention of the respondent that there is no agreement to sell has been executed stands rejected. Hence, relief sought by the complainant under the provisions of section 18 of the RERA Act is maintainable.

F.III The present complaint is barred by the limitation.

20. The respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of *Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation vs Commissioner of Central Excise* wherein the Hon'ble Apex Court had held that Indian Limitation Act applies only to the courts and not to the Tribunals. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a court. The promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring.
21. On consideration of the documents available on record and submissions made by the party, the authority observes that the project in question is an ongoing project, and the respondent/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

22. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
23. Moreover, it is observed that vide receipt dated 31.07.2006, it was agreed between the parties that the promoter shall give possession of a plot having size of 300 sq. yards to the complainant. Further, it was agreed that on completion of the process of allotment to all allottees, the promoter will get the plot registered in name of the complainant on payment of stamp duty and other charges payable to the government. However, despite receipt of consideration amount of Rs.19,50,000/- from the complainant back in 2006 against the booked plot, the respondent-promoter has not even allotted a specific plot to the complainant and also no effort has been made by it to get the plot registered in her name till date. As the respondent has failed to handover the possession of the allotted plot to the complainant 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.

24. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint barred by limitation is hereby rejected.

G. Findings on the relief sought by the complainant

G.I To allot a unit to the complainant of 300 sq. yrds. or otherwise, to the satisfaction of the complainant with respect to the location and the cost of the unit/plot.

G.II Direct the respondent to pay interest for every month of delay at prescribed rate of interest from after 3 years of the booking receipt, being a reasonable time and hence accordingly pay interest at the prescribed rate from 31.07.2009 till the actual delivery of possession.

G.III To adjust the delayed possession charges against the remaining amount to be paid against the unit.

G.IV To pay the remaining delayed possession charges after adjustment as per para 3 of the relief, if any.

25. All the above-mentioned reliefs G.I, G.II, G.III, and G.IV are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

26. The complainants have booked a plot admeasuring 300 sq. yards with M/s Ramaprastha Promoters & Developers Private Limited in the future potential project by making a payment of Rs.19,50,000/- vide receipt dated 31.07.2006. It was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.

27. Vide proceeding dated 07.11.2023, the AR of the respondent stated at bar that the respondent is committed to the allotment of plot to the complainants on completion of the formalities for which registration has already been granted but zoning and service estimates are awaited. Further he was directed to file an status report before the authority as to the status

of the project in which the allotment of plot is to be made to the complainants and the time by which the allotment and possession shall be made before the next date of hearing.

28. Vide order dated 02.01.2024, in view of the non-compliance of directions of the authority vide order dated 07.11.2023, the respondent was asked to show cause as to why penalty of Rs. 5 lakhs be not imposed, and respondent was further directed to file the required status report within two weeks failing which further consequence shall follow. Despite specific directions of the Authority, the affidavit/status has not been filed by the respondent in the registry and no reply has been filed to the show cause directions for penalty of Rs. 5 Lakhs. During the course of proceeding dated 28.05.2024, the penalty of Rs. 5 lakhs were imposed upon the respondent for non-compliance of directions of the Authority u/s 63 of the Act,2016. But respondent failed to submit the asked status report. Further the respondent states that complainants are not entitled to any plot merely on the basis of payment receipt as no rights have vested in their favor but it is their discretion to opt for the refund of money as a remedy which they have not done subject to the bar under the law of limitation.
29. Till date, the respondent has miserably failed to specify the project as well as plot number where 300 sq. yards. has been allotted. The complainant tired of the neglectful behaviour of the respondent filed the present complaint pleading for possession of the plot along with delayed possession charges and execute the conveyance deed in favour of the complainant.

30. On the contrary, the respondent states that there is no BBA has been executed between the parties and there is no specified number and block & project has been specified and only a receipt has been issued by it. The complainant has made booking by paying Rs.19,50,000/- for a future project which was not in existence.
31. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

32. **Allocation of unit and due date of possession:** As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter *Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1* and then was reiterated in *Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725:*

"Moreover, 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 i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

33. In the instant case, the promoter has allotted a plot in its project vide receipt dated 31.07.2006. In view of the above-mentioned reasoning, the date of allotment ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the plot comes out to be 31.07.2009.

34. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainants are seeking delay possession charges at the prescribed rate. 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

35. 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.
36. 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., 20.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
37. 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;"*

38. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent /promoter which

is the same as is being granted to the complainant in case of delayed possession charges.

39. On consideration of the documents available on record and submissions made by both the parties 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. The possession of the subject plot was to be delivered by 31.07.2009. However, despite receipt of Rs. 19,50,000/- against the booked plot back in 2006 except stamp duty and other charges payable to the government, the respondent-promoter has failed to enter into a written agreement for sale with respect to the same and has failed to handover possession of the subject plot to the complainants till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted plot to the complainants. Further no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
40. 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 complainants are entitled to delay possession charges at the prescribed rate of interest @11.10% p.a. w.e.f. 31.09.2009 till

offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.V To execute a conveyance deed as per section 17 of the Act, in favour of the complainant


41. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
42. The respondent is directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016. Further, the respondent is directed to handover the possession of the unit on payment of outstanding dues if any, within 90 days.

H. Directions of the authority

43. 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 allot and deliver the possession of booked plot. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, respondent will be liable to make available to complainant a plot of the size, as booked,

- specifying the future upcoming project wherein specify plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
- ii. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11% p.a. for every month of delay from the due date of possession i.e., 31.07.2009 till offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession or, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - iii. The arrears of such interest accrued from 31.07.2009 till the date of order by the authority shall be paid by the respondent/promoter to the complainant within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act 2016.

44. This decision shall mutatis mutandis apply to both the cases mentioned in para 3 of this order.
45. Complaint stands disposed of.
46. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.08.2024


HARERA
GURUGRAM