

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

Complaint no.: 2395 of 2023
Date of filing: 05.06.2023
Order pronounced on: 22.08.2024

Vandana Agarwal
R/o: - 761, Sector 14, Gurugram, Haryana

Complainant

Versus

M/s Ramprastha Estates Private Limited
(Formerly known as Ramprastha Promoters and
Developers Private Limited)
Regd. office at: - Plot No. 114, Sector-44,
Gurugram-122002.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Rishabh Jain (Advocate)
Shri R. Gayatri Mansa (Advocate)

Complainant
Respondent

ORDER

1. This complaint 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 allottee as per the agreement for sale executed *inter se*.

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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.	Particulars	Details
1.	Project name and location	"Ramprastha City" Sector-92, 93 and 95, Gurugram.
2.	Project area	128.594 acres
3.	Nature of the project	Plotted colony
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010 valid till 08.06.2016
5.	Name of licensee	Ramprastha Estates Private Limited and 25 others
6.	RERA registered/not registered	Registered vide no. 13 of 2020 dated 15.05.2020 valid up to 14.05.2025
7.	Unit no.	E-383, Block-E (page 61 of complaint)
8.	Unit measuring	250 sq. yds. (page 61 of complaint)
9.	Date of tripartite agreement	24.09.2012 (page 44 of complaint)
10.	Date of allotment letter	31.01.2014 (page 50 of complaint)
11.	Date of execution of plot buyer agreement	15.02.2014 (page 58 of complaint)
12.	Total sale consideration	Rs.37,00,000/- (As per payment plan page 73 of complaint)
13.	Amount paid by the complainant	Rs.32,15,000/- (As per receipt information on page no. 39, 51-52 of the complaint)
14.	Possession clause	11. Schedule for possession (a) <i>The company shall endeavor to offer possession of the said plot, within thirty (30) months from the date of execution of this agreement subject to timely payment by the intending allottee(s) of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan.</i>

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		<i>(As per page no. 64 of the complaint)</i>
15.	Due date of delivery of possession	15.08.2016 (calculated 30 months from the date of execution of plot buyer's agreement i.e., 15.02.2014)
16.	Completion Certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That in the plot buyer's agreement, it is stated that the respondent possesses the land measuring 128.594 acres situated at revenue estate of villages Wazirpur and Meoka in Sector 92, 93 & 95 in District Gurugram, Haryana. The Director, Town and Country Planning, Haryana vide license bearing no. 44 of 2010 dated 09.06.2010 had granted permission for setting up a residential plotted colony to be known as 'Ramprastha City'.
- II. That the respondent even prior to the grant of the license, collected a huge amount from buyers including the complainant from 2006 to 2014 and promised the complainant to hand over the possession of the plot latest by 15.08.2016 as per the plot buyer's agreement. The complainant, in total paid a sum of Rs.32,15,000/- way back till February, 2014 as and when demanded by the respondent. Still the respondent failed to timely handover the possession of the plot to the complainant till date.
- III. That even after a delay of more than 6 years and 9 months, the respondent has failed to offer the possession of the plot to the complainant till date.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to pay delay possession charges along with prescribed rate of interest.
 - ii. Direct the respondent to complete the development of the plot along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.

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- iii. Direct the respondent to handover the legal and rightful possession of the plot to the complainant, after receiving the completion certificate (cc) and other required approvals from the competent authorities.
 - iv. Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the plot, with liberty to the complainant to seek appropriate remedy if the respondent fails to handover the possession on the date mentioned before the authority.
 - v. Direct the respondent to execute a legitimate and lawful conveyance deed for the plot bought by the complainant.
 - vi. Direct the respondent to not charge anything beyond the charges stipulated in the plot buyer's agreement.
 - vii. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant case.
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 contested the complaint on the following grounds: -

- I. That the complainant is not an allottee and hence the proceedings are merely in the nature of recovery which is not maintainable before the Forum. Even if it is assumed that such a claim in the nature of money is maintainable, the claim is hopelessly barred by limitation as filed after the expiry of 3 years from the date of payment.
- II. That on examination of the zoning plans which were issued by the Government in early 2014, it became clear that there were various aspects which required further correction in the zoning plans of the Government and which will have a direct effect on the layout of a residential plotted colony. The various factors as evidenced in Letter dated 07-04-2014 were:
 - a. That there is a HSIIDC Nala which is passing through the land adjoining to the HUDA Nala in the village Gaduli Kalan.
 - b. That the boundary lines of village Basai and Gadauli Kalan is wrong and not as per the sizra plans.

- c. The position of khasra Nos. were not correct.*
d. That a new HT Line passing through the colony has been installed by Dakshin Haryana Bijli Vitaran Nigam which will have an effect on various plots of land and also a separate green corridor was required to be created on both sides of the HT line.

- III. That revision in zoning plans of any development area is a cumbersome process undertaken by the State authorities and the respondent has no control over the process. The respondent was obliged to point out the various discrepancies and corrections that were required in the zonal plans and which will have a further effect on the layout of the residential plotted colony. By September 2014, it was clear that fresh zoning is required to be undertaken and this will take considerable time. This was specifically informed to all the allottees.
- IV. That the HSIIDC Nala was not shown in government approved Sectoral Plan. Due to said flaw, the respondent was unable to finalize the development of nearby area of said Nala which includes the plots for economic weaker section (EWS Plots). The EWS Plots cannot be reduced as per the settled proposition of law 'EWS policy'. Any relocation of the EWS Plot will lead to further revising/changing of the layout plan.
- V. That because of the deviation in the road, the community centre located near HSIIDC Nala has also been affected. Non-development of the community centre in the planned manner will cause grave loss to the applicant while developing the project. The area allotted for the community centre cannot be reduced, in alternative it can be relocated but which will again lead to revision of layout plan.
- VI. That the project is being developed by the applicant in a holistic manner therefore the sites where high school and primary school are located should not be affected. The said project cannot be reduced, in alternative it can be relocated but which will again lead to revision of the layout plan.

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- VII. That all the sites which are being developed by the applicant in the project are of great importance for the basic amenities necessary for the livelihood of the general public, therefore the same should not be affected. Similarly, the area allotted for the nursing home and other important amenities in the said project cannot be reduced, in alternative it can be relocated but which will again lead to revision of the layout plan.
- VIII. That approx. 60-70% of the plots of the project developed by the respondent was adversely affected because any small change in the layout plan will impact whole project because one demarcated change will lead to another change in the layout plan. The impact of one change in the plot will have an impact on subsequent plot/ road/ amenities as demarcated in the layout plan by the applicant

7. All other averments made in the complainant were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority.

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.



E.II Subject-matter Jurisdiction:

11. 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)(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.

12. 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 the objections raised by the respondent

F.I Objections regarding the complainant being investor.

13. The respondent took a stand that the complainant is not an allottee and proceedings are merely in the nature of recovery which is not maintainable before the Authority. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is a buyer and she has paid a total price of Rs.32,15,000/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or 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;"

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.II Objection raised by the respondent regarding the complaint being non-maintainable on ground of being barred by limitation.

15. The respondent further contends that the complaint is not maintainable as it is barred by limitation, citing that the complainant filed after the expiry of 3 years from the date of payment. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as ***M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others*** which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with

the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

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

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

17. The respondent has contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals/Completion certificate, passing of HT lines over the project, passing of HSIIDC nala etc. non-availability of necessary infrastructure facilities like road connectivity, laying down of water, electricity lines etc. to be provided by the government for carrying out development activities 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. 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.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delay possession charges along with prescribed rate of interest.

18. That the complainant was allotted a plot no. E-383, Block-E in the project "Ramprastha City" Sector-92, 93 and 95, Gurugram by the respondent-builder for a sale consideration of Rs.37,00,000/- vide allotment letter dated 31.01.2014. Further, the plot buyer agreement was executed between the

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parties on 15.02.2014. The complainant has paid a sum of Rs.32,15,000/-to the respondent against the allotted unit.

19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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

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

11. Schedule for possession

(a) The company shall endeavor to offer possession of the said plot, within thirty (30) months from the date of execution of this agreement subject to timely payment by the intending allottee(s) of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan.

(Emphasis Supplied)

21. As per the abovementioned clause 11(a) of the plot buyer's agreement, due date of possession is to be calculated as 30 months from the execution of plot buyer's agreement. Therefore, the due date is calculated 30 months from the execution of plot buyer's agreement i.e., 15.02.2014 which comes out to be 15.08.2016.

22. **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.

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., 22.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. 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;"

26. 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.

27. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 15.02.2014, the possession of the subject unit was to be delivered within 30 months from the date of execution of this agreement. Therefore, the due date of handing over possession comes out to be 15.08.2016. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement 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 unit to the complainant as per the terms and conditions of the buyer's agreement dated 15.02.2014 executed between the parties. 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.

28. 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. 15.08.2016 till offer of possession plus two months or actual handing over of possession after obtaining completion certificate from competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II Direct the respondent to complete the development of the plot along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.



G.III Direct the respondent to handover the legal and rightful possession of the plot to the Complainant, after receiving the Completion Certificate (CC) and other required approvals from the competent authorities.

G.IV Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the plot, with liberty to the complainant to seek appropriate remedy if the respondent fails to handover the possession on the date mentioned before the Haryana Real Estate Regulatory Authority, Gurugram.

29. The above-mentioned reliefs sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

30. As per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the builder buyer agreement dated 15.02.2014 executed between the parties after obtaining completion certificate from the competent authority.

G.V Direct the respondent to execute a legitimate and lawful conveyance deed for the plot bought by the complainant.

31. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title :- (1).

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case, may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws. Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

32. The authority observes that CC with regard to unit in question has not been obtained by the respondent/promoter from the competent authority. The respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the completion certificate from the

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competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of three months after receiving completion certificate from the competent authority.

G.VI Direct the respondent to not charge anything beyond the charges stipulated in the Plot Buyer's agreement.

33. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement

G.VII Direct the Respondent to pay legal expenses of Rs.1,00,000/- incurred by the Complainant for filing and pursuing the instant case.

34. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled *as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

H.Directions of the authority

35. 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 to the complainant against the paid-up amount i.e. Rs.32,15,000/- at the prescribed rate i.e. 11.10% p.a. for every month of delay from the due date of possession i.e., 15.08.2016 till offer of possession plus two months or actual handing over of possession after obtaining completion certificate from the competent

authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- ii. The arrears of such interest accrued from due date of possession till the date of order by the authority shall be paid by the promoter to the allottee 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.
 - iii. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges. The respondent/promoter shall handover possession of the unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining completion certificate from the competent authority.
 - v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 22.08.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram