

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

Complaint no. : 1673 of 2021
Date of filing : 02.04.2021
Date of decision : 03.09.2024

1. Kanta Khanna
2. Vipin Khanna
Both R/o: - T-5/101, Civitech Park Sapphire,
Ramprastha Greens, Vaishali, Ghaziabad, UP-201010

Complainants

Versus

M/s Ramprastha Developers Private Limited
Office at: Plot no. 114, Sector- 44, Gurugram- 122002

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

**Chairman
Member
Member**

APPEARANCE:

Shri Garv Malhotra
Ms. R. Gayatri Mansa

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 02.04.2021 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Ramprastha City, Sectors 92, 93 & 95, Gurugram
2.	Project area	Cannot be ascertained
3.	Plot no.	N.A.
4.	Unit area admeasuring	300 sq. Yds. (Page no. 19 of the complaint)
5.	Date of booking application	N.A.
6.	Welcome letter	N.A.
7.	Preliminary Allotment letter	02.06.2011 (Page no. 16 of the complaint)
8.	Date of execution of plot buyer's agreement	N.A.
9.	Possession clause	N.A.
10.	Due date of possession	Cannot be ascertained
11.	Basic price of the plot	N.A.
12.	Amount paid by the complainants	Rs.18,00,000/- [As per receipt information at page no. 15 of the complaint]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- i. That respondent is the developer/builder of the project. The respondent had launched a new residential plotted project called "THE RAMPRASTHA CITY" in Sector 92, 93 & 95, Gurugram, Haryana & had published many advertisements for the project to attract the public at large.
- ii. That on **17.04.2007** an amount of Rs 18,00,000/- as full and final basic sale price was paid by the complainants to the respondent and a receipt no 1404 was issued by the respondent.
- iii. That even after taking 100% of basic sale price the respondent did not sign and execute a BBA, despite the complainant's various visits to the respondent's office. Till date no builder buyer agreement has been made and executed between the respondent and complainants despite receiving full and final basic sale price much in advance. This is clear violation of Section 13 of RERA Act.
- iv. That after repeated requests and follow ups the respondents finally on 02.06.2011 issued an allotment in favour of the complainants for plot measuring 300 Sq. Yards in Ramprastha City, Gurugram.
- v. That the possession is delayed by almost 11 years. Despite facing serious hardship on account of the delay, the complainants do not wish to withdraw from the project but should be paid delayed possession charges/ interest as prescribed under the Act. That the complainants had complied with all the terms and conditions of the allotment letter, but the respondents failed to meet up with their part of the contractual obligations and thus are liable for interest for delayed possession from the due date of possession till date of actual handing over of physical possession. Till date no adequate amount has been paid back to the

Complainants and the respondents are enjoying the hard-earned money of the complainants for nearly 14 years.

- vi. That despite multiple attempts at getting the respondent builder to execute the builder buyer agreement and the conveyance deed, the respondent builder refused to execute the builder buyer agreement and the conveyance deed. The respondent be directed to immediately execute the builder buyer agreement and the conveyance deed without prejudice to any of the legal rights of the complainants.
- vii. That the respondent builder should be directed not to levy any arbitrary charges, excess VAT deductions, etc without handing over physical possession.
- viii. Moreover, in the present project the respondents have charged the complainant on super built up area whereas as per the new act the basic sale price is liable to be paid on the carpet area only. This is a clear and blatant violation of the provisions, rules and object of the Act. The respondent be directed to charge the complainant on the basis of carpet area only, in accordance with the new act and not on the super built up area.
- ix. That it is humbly submitted that the complainants have suffered great losses in terms of loss of rental income, opportunity to own and enjoy a home in Gurugram. The complainants have not been able to buy another flat in Gurugram as majority of their life's hard-earned money is stuck in this project. The complainants continue to travel from pillar to post to safeguard their hard-earned money in seek of justice. The respondent is liable to compensate the complainants for its above acts and deeds causing loss of time, opportunity and resources of the complainants due to the malpractices of the respondents, the

complainants suffered greatly on account of mental & physical agony, harassment and litigation charges. Thus, due to such hardship faced by the complainants by the act and misconduct of the respondents, the complainants reserve their right to file and pursue a case for compensation before Adjudicating officer.

C Relief sought by the complainants: -

4. The complainants have sought following relief(s)
 - I. Direct the respondent to pay delay possession charges along with prescribed rate of interest.
 - II. Direct the respondent not to levy any arbitrary charges, excess VAT deductions, etc without handing over physical possession.
 - III. Direct the respondent to immediately execute the builder buyer agreement and the conveyance deed without prejudice to any of the legal rights of the complainants.
 - IV. The complainants should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.
 - V. The respondent be directed to charge the complainant on the basis of carpet area only, in accordance with the new act and not on the super built up area.
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. 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. It is submitted that the complainants had requested the respondent seeking investment in undeveloped agricultural land in the year 2007 in the hope of making speculative gains on the approval of the zoning plans. But since the zoning plans were not approved by the government, the complainants have sought to file this vexatious complaint. The respondent has not agreed to provide service of any kind to the complainant unless the plans were approved as it was merely a transaction for sale of plot. 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.

- ii. That the complainant has approached the respondent in the year 2007 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. Thereafter, on 17.04.2007, the complainants have paid a booking amount of Rs. 18,00,000/- towards booking of the said project pursuant to which a receipt bearing no.1404

was issued to the complainant. Thereafter, in the year 2011, the respondent has issued a letter dated 02.06.2011 vide which it was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.

- iii. That further the complainants have maliciously alleged that they have paid full consideration towards the booking of the plot in the futuristic project of the respondent, while in reality they have only paid an amount of Rs. 18,00,000/- 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 April, 2007 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.
- iv. That further the complainants have also never approached the respondents after 2007 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.
- v. 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.

- vi. It is submitted 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 2007.
 - vii. In the absence of a plot buyer's 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 14 years by when such payments have become barred by limitation.
 - viii. That further no date of possession has ever been mutually agreed between the parties. Even in the provisional allotment letter dated 02.06.2011, 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 petitioners have claimed interest from the April, 2010 which also shows that the amount claimed by the complainants have hopelessly barred by limitation.
7. All other averments made in the complaint 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 observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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)

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.

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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.1 Objection regarding maintainability of complaint

13. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainant has made the payment back in 2011. The objections to the same were to be raised in a time bound manner. Hence, the complaint is not maintainable on the above-mentioned ground.
14. On consideration of the documents available on record and submissions made by the party, the authority observes that the project in question namely "Ramprastha City, Sector-92, 93 & 95, Gurugram" registered vide registration no. 13 of 2020 dated 05.06.2020 valid upto 31.12.2024 is an ongoing project
15. 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.
16. It is important to note that despite receipt of consideration of Rs. 18,00,000/- against the booked plot back in 2011 except stamp duty and other charges payable to the government, the respondent-

promoter has failed to execute an agreement for sale with respect to the same and has failed to get the plot registered in name of the complainants till date. As the respondent has failed to handover the possession of the allotted plot to the complainants and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduced as under for ready reference: -

22. Continuing breaches and torts-

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

17. 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 complainants.

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

18. The complainants have booked a plot admeasuring 300 sq. yards in the project of respondent named "Ramprastha City" located in Sector 92, 93 and Sector 95, Gurugram by making a payment of Rs.18,00,000/- vide receipt dated 17.04.2007. It was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.
19. Vide orders dated 30.07.2021, 10.09.2021, 13.10.2021, 10.12.2021, the authority directed the respondent to execute the buyer agreement with the complainant and also imposed a cost of Rs.15,000/- to be paid to him for non-compliance of the orders of this authority. The counsel for

the complainant states at bar that a copy of the buyer agreement was received from the respondent on 04.12.2021 wherein the due date for offer of possession was missing and was dependent upon certain conditions which are not acceptable. The objections to the draft buyer agreement were filed before the authority on 10.12.2021. However, no response has been forthcoming from the respondent. During the course of proceeding dated 30.05.2023, the respondent was directed to submit revised buyer agreement with clear date of handing over of possession and payment plan and also clarifying the area of the plot initially allotted and subsequently reduced (in the draft BBA) within a period of 2 weeks.

20. Vide order dated 05.09.2023, in view of the non-compliance of directions of the authority vide order dated 30.05.2023, the respondent was asked to show cause as to why penalty of Rs. 10 lakhs be not imposed and if directions not complied by the next date, the director of the company shall be present to explain the non-compliance.
21. During the course of proceeding dated 03.10.2023, the penalty of Rs. 5 lakhs was imposed upon the respondent for non-compliance of directions of the Authority u/s 63 of the Act, 2016 and again directed the respondent to come forward and to execute the buyer agreement with the complainant within next 3 weeks.
22. Further, during the course of proceeding dated 09.01.2024, Shri Sumit Nain, engineer Executive of the Authority was directed to visit the site and submit the report of the land on which the above project is being

developed, the status of the developmet works, ownership details alongwith sales are being undertaking in respect of above sectors. The LC report in the matter has been received on 05.03.2024. It has been brought to the notice of the authority by the LC that regarding the sale in the project, the list of sold/unsold plots was sought from the promoter but neither list has been submitted nor any representative appeared from the marketing team. However, as per the record available with the authority in the registration file and QPR for the quarter ending December 2022 there were 628 plots in the project (excluding 161 EWS plots) out of which 362 plots are sold and 266 plots are unsold.

23. On 09.07.2024, the respondent confirmed the amount received and promised the allotment of a plot admeasuring 300 sq.yards in the project namely "Ramprastha City" located in Gurugram.
24. In the present complaint, the complainants intend 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."

25. **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."

26. In the instant case, the promoter has allotted a plot in its project vide preliminary allotment letter dated 02.06.2011. 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 02.06.2014.
27. **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.

28. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
30. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. Therefore, interest on the delay payments from the complainants 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.
32. 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 02.06.2014. However, despite receipt of Rs. 18,00,000/- against the booked plot back in 2011 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.

33. 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. 02.06.2014 till actual handing over of possession or offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority or, 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 not to levy any arbitrary charges, excess VAT deductions, etc without handing over physical possession.

G.III Direct the respondent to immediately execute the builder buyer agreement and the conveyance deed without prejudice to any of the legal rights of the complainants.

G.IV The complainants should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.

G.V The respondent be directed to charge the complainant on the basis of carpet area only, in accordance with the new act and not on the super built up area.

34. The above mentioned reliefs no. G.III, G.IV & G.V as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

35. The authority is hereby directs the respondent to execute buyer's agreement within a period of 30 days from the date of this order and not to charge anything which is not part of buyer's agreement. Further, 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 complainants. 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. 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 on payment of stamp duty and registration charges as applicable. 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

36. 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/promoter is directed to allot a specific plot of 300 sq. yds in its project namely Ramprastha City Sector- 92, 93 and 95, Gurugram.
- ii. The respondent is directed to execute buyer's agreement within a period of 30 days.

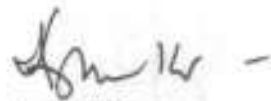
- iii. The respondent is directed to handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.
- iv. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 02.06.2014 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate/part 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.
- v. The arrears of such interest accrued from 02.06.2014 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.
- vi. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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.
- viii. The respondent is further directed to pay penalty of Rs. 5 Lakhs imposed by the Authority vide order dated 03.10.2023 for non-

compliance of directions of the Authority U/s 63 of the Act, 2016 within a period of 30 days from the date of this order.

37. Complaint stands disposed of.
38. File be consigned to registry.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2024

HARERA
GURUGRAM