

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

Complaint no. : 1643 of 2022
Date of filing : 18.04.2022
Date of decision : 22.10.2024

1. Nilesh Kumar Murarka
2. Mukesh Kumar Murarka
Both R/o: - 72 DLF New Town Heights Sector 90

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 18.04.2022 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, Sector 92, 93 and 95, Gurugram, Haryana
2.	Project area	Cannot be ascertained
3.	Plot no.	N.A.
4.	Unit area admeasuring	250 sq. Yds. (Page 20 of the complaint)
5.	Date of receipt	27.10.2010
6.	Letter of preliminary allotment	20.12.2010 (Page 20 of the complaint) Inadvertently mentioned as 20.10.2010 vide proceeding dated 13.08.2024)
7.	Allotment letter	N.A.
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	Cannot be ascertained
12.	Amount paid by the complainant	Rs.20,00,000/- [Vide receipt dated 27.10.2010, Page 19 of the complaint]

B. Facts of the complaint

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

- i. That the complainants are the prospective co-owners of a residential plot in Ramprastha City in Sector 92,93 and 95, Gurugram, Haryana

- (hereinafter referred to as the "Subject Property" admeasuring 250 Sq. yds.).
- ii. That the total consideration for the subject property was decided as Rs. 20,00,000/- respectively out of which Rs. 20,00,000/- was paid on 27.10.2010.
 - iii. That the receipt of the payment made by the complainants were duly acknowledged by the respondent wherein, the respondents confirmed that the complainants have booked 1 plot in the said project of 250 Sq. Yard (approx.) was allotted to the complainants.
 - iv. That subsequently, the respondent sent a letter dated 20.12.2010, giving the preliminary allotment for plot measuring 250 sq. yards in Ramprastha City, Gurgaon.
 - v. That till date no builder buyer agreement has been executed by the respondents despite receiving the entire consideration amount.
 - vi. That the respondent kept assuring the complainants that the possession of the plot would be handed over soon to the complainants as the complainants had made a payment of Rs. 20,00,000/- 12 years ago and till date no PBA was executed despite regular follow ups. However, thereafter, for reasons best known to the respondent, till date neither the PBA or the allotment of plot or possession is handed over to the complainants despite paying Rs. 20,00,000/-.
 - vii. That aggrieved with the conduct of the respondent, the complainants sent multiple reminders to the respondent through emails and post and tried to meet them physically at the office/location but the respondent failed to respond to the same and continued to disregard

complainant's request of handing over the physical possession of the plot and execution of the agreement.

C Relief sought by the complainants: -

4. The complainants have sought following relief(s)
 - I. Direct the respondent allot the plot in favour of the complainant and to handover the possession of the allotted plot to the complainants on completion in said project.
 - II. Direct the respondent to pay the prescribed amount along with interest at 24% for delay in handing over the possession since 2010 to the respondent towards purchase of the said residential unit.
 - III. Direct the respondent not create any third-party interest in the said unit allotted to the complainants.
 - IV. Direct the respondent to waive off any escalation cost, hidden charges which will be forcibly imposed on buyer at the time of possession as practice and practice used by builders to guise of a biased arbitrary and one-sided drafting of the agreement with the malicious and fraudulent intent.
 - V. Hold the respondents guilty of indulging into unfair practices and providing deficient services to the complainants and award a compensation of Rs.10,00,000/- with interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
 - i. that 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 2010 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 the 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 2010 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sector 92,93 & 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 27.10.2010, the complainants have paid a booking amount of Rs. 20,00,000/- through cheque bearing nos. 304651 & 304652 drawn on Corporation Bank towards booking of the said project pursuant to vide Receipt no. RPDPL/501 dated 27.10.10

- was issued. 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 paid an amount of Rs. 20,00,000/- which is part or total consideration of the Plot. It is submitted that the said payments were not full and final payments 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 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 petitioners have claimed interest from the July, 2016 which also shows that the amount claimed by the complainants have hopelessly barred by limitation.
- v. The claims for possession are superfluous and non-est in view of the fact that the complainants are actually not even entitled to claim possession of the plot as on date. It is submitted that it is only on default in offer/handover of possession that the petitioners right to claim possession/refund crystalizes.

- vi. 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.
 - vii. 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.
 - viii. 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 petitioners have knowingly made speculative investments in the said project.
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.1 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 2010. 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. 20,00,000/- against the booked plot back in 2010, 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.

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 the prescribed amount along with interest at 24% for delay in handing over the possession since 2010 to the respondent towards purchase of the said residential unit.

18. The complainants have booked a plot admeasuring 250 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.20,00,000/- vide receipt dated 27.10.2010. The respondent confirmed the amount received and promised the allotment of a plot admeasuring 250 sq. yards. in the future potential project located in Gurugram. Thereafter, the respondent has issued letter dated 20.12.2010 regarding preliminary allotment in the project Ramprastha city, Sector 92, 93 and 95, Gurugram. Till date, the respondent has miserably failed to allot a designated unit/plot to the complainants. The complainants being tired of the neglectful behavior of the respondent filed the present complaint pleading for possession of the plot along with delayed possession charges and compensation.
19. On the contrary, the respondent vide reply dated 29.08.2022 submitted that the complaint is time barred by limitation as the complainant made the payment in the year 2010, and thereafter it never came forward for booking application form and buyer's agreement. Accordingly, the

complaint is liable to be rejected. Moreover, the complainant was aware from the very inception that it is making payment w.r.t. future project which is not yet launched.

20. 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."

21. **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."

22. In the instant case, the promoter has allotted a plot in its project vide preliminary allotment letter dated 20.12.2010. 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 20.12.2013.

23. **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.

24. 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.

25. 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., 22.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

26. 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;"

27. 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.

28. 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 20.12.2013. However, despite receipt of Rs. 20,00,000/- against the booked plot back in 2010, 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.

29. 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. 20.12.2013 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 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.II Direct the respondent not create any third party interest in the said unit allotted to the complainants.

G.III Direct the respondent to waive off any escalation cost, hidden charges which will be forcibly imposed on buyer at the time of possession as practice and practise used by builders to guise of a biased arbitaray and one sided drafting of the agreement with the malicious and fraudulent internt .

30. The above mentioned reliefs no. G.II & G.III 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.

31. 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.

G.IV Compensation

32. The complainants are seeking above mentioned relief w.r.t. compensation and litigation. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses

H. Directions of the authority

33. 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 plot number admeasuring 250 sq. yds in its project namely Ramprastha City Sector- 92, 93 and 95, Gurugram in terms of preliminary allotment letter and execute buyer's agreement with respect to the allotted unit 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 11.10% p.a. for every month of delay from the due date of possession i.e., 20.12.2013 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.
- iii. The arrears of such interest accrued from 20.12.2013 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.,


11.10% 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.

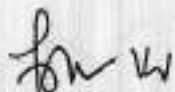
vi. The respondent is directed to handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.

34. Complaint stands disposed of.

35. File be consigned to registry.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024