

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

Complaint no. : 1102 of 2022
Date of filing : 22.03.2022
Date of decision : 22.10.2024

Subhash Gupta
R/o: - House no. 102, Sector-15, Escorts nagar ,
Faridabad, Haryana-121007

Complainant

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 Harshit Batra
Ms. R. Gayatri Mansa

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 22.03.2022 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	N/A
2.	Project area	Cannot be ascertained
3.	Plot no.	N.A.
4.	Unit area admeasuring	600 sq. Yds. (Page no. 14 of the complaint)
5.	Date of receipt	31.07.2006 (page 14 of complaint)
6.	Welcome letter	N.A.
7.	Preliminary 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	N.A.
12.	Amount paid by the complainants	Rs.39,00,000/- [As per receipt information at page no. 14 of the complaint]

B. Facts of the complaint

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

- 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 relying on the assurances, promises, representations and warranties of the respondent, the complainant decided to make a registration of 600 sq. yards (the "Unit") in the future potential projects of the Respondent. That consequently, the complainant paid Rs. 39,00,000/- towards such booking through cheque no. 415998/018608 dated 05.05.2006 drawn on Bank of Rajasthan. Upon receipt of the said cheques against the booking amount, the respondent gave a receipt no.582 dated 31.07.2006 against the said amount.
- iii. 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.
- iv. 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. The promises,

- assurances and warranties made by the respondent were broken in the most unlawful and illegal manner.
- v. That the respondent had the obligation of executing an agreement for sale with the complainant. 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 an 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.
- vi. 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.

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. To pay delayed possession charges from after 3 years of the booking receipt, being a reasonable time as per the holding of Fortune Infrastructure Vs. Travor Dlima MANU/SC/0253/2018 : (2018) 5

S.C.C. 442 and hence accordingly pay interest at the prescribed rate from 31.07.2009 till the actual delivery of possession.

III. To execute a conveyance deed as per section 17 of the Act, in favour of the Complainant.

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 the complainant had approached the respondent and made inquiries regarding future projects of the respondent. 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 have sought to file this vexatious complaint which is completely unsubstantiated and is bereft of any material documentary evidence. The respondent has 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 complainant has voluntarily entrusted a sum of money to the respondent so that they will get the first priority in case the development plans eventually get approved by the competent authority.

The respondent has neither promised any particular plot or location nor promised any particular price or completion date to the complainant. Hence, there is no question of any breach by the respondent and no cause of action has accrued in favour of the complainant. The present complaint has been filed with malafide intention and is an abuse of the process of the Authority which is evident from the prayers wherein the complainant had demanded hefty interest when there was no agreement between the complainant and the respondent whatsoever for either any allotment or any development and hence there exists no agreed terms for possession date or price or location/project etc., hence there are no terms which can be said to be legally enforceable under the provisions of the Real Estate (Regulation and Development) Act, 2016. The complainant is very well aware of the fact that the money entrusted by the complainant was not towards any booking or agreement but merely to ensure that in case any development approval is granted by the concerned authorities in future the complainant will get an opportunity to participate in priority of other interest customers. The complainant has filed the complaint claiming wrongful gains in the form of interest at the cost of the respondent when in reality there was no such understanding between the parties and there is no condition to attract the provisions of the Act. The complainant had approached the respondent in the year 2006 showing interest to participate in one of the future potential projects of the respondent. It is pertinent to mention that the above-named future potential project was indeterminate at the

point of time when the money was paid by the complainant merely to ensure that he is given priority to participate in any project that gets the approval of the Competent Authority. It is submitted that the complainant had the option at all times to either claim refund of his money or let his money remain with the respondent in anticipation of future approvals which is subject to government action. Further, the complainant had the option at all times to recall his money even if the approval had come through, in the event, he was not willing to participate in such projects. Since the complainant, always had such option but voluntarily opted to let his money remain with the respondent, hence he cannot be allowed to claim interest which has no legal or contractual basis. It is submitted that the Real Estate (Regulation and Development) Act, 2016 can come to the rescue of only genuine allottees and not speculative individuals like the complainant.

- ii. That the complainant fully being aware of the dynamic prospects of the said futuristic project which was indeterminate at the point of time when the complainant paid the money and the fact that it is subject to various government approvals for which there is no time line assured by the government authorities, either promised or otherwise, have still decided to keep their money with the respondent which was clearly with a speculative purpose and such speculative acts are not protected by any law. Hence, no right of the complainant could be said to have been breached by the respondent, giving rise to any claim for interest as

alleged by the complainant. Hence, the complainant is liable to be dismissed with costs.

iii. That it is herein submitted that from the date of payment till the date of filing of the present complaint, the complainant has never raised any demand or claim whatsoever even though the complainant had the option at all times which show that the complainant voluntarily let his money remain with the respondent for his own selfish and speculative intents. The complainant has now approached the Authority with concocted and fabricated story to conceal the true matrix of the situation accordingly to which the complainant has no vested right in any determinate project but has merely paid money to be allowed to participate in case the approvals had come through. The conduct of the Complainant clearly indicates that the Complainant's objects and intents are speculative not only behind making the payment but also behind filing the present Complaint. It is shocking that the Complainant is even today not claiming any refund but is trying to abuse the process of the Tribunal to claim hefty interest which is not tenable in law in the facts and circumstances of the present case. It is submitted that the complainant is indirectly claiming specific performance for delivery of an indeterminate property on the basis of indeterminate terms which is not permissible in the eyes of law. The complainant has no vested right to claim possession of any property as it is not yet determined and hence there is no question of any delay as alleged by the complainant. It is submitted that the delay is absolutely non-existent and imaginary under

the present facts and hence, there is no entitlement of any interest whatsoever.

- iv. That further no date of possession has ever been mutually agreed between the parties. That in absence of any document in the nature of a builder buyer agreement, which contains several terms and conditions including the date of possession and the consequences of default, no date of possession can be said to have been mutually agreed between the parties. It is trite in law that a party claiming default must first prove the default beyond reasonable doubt by means of substantial evidence. The complainant herein has not adduced any reasonable proofs in the nature of documentary evidence which establishes the date of possession, terms and conditions of possession, default and the consequential effect of such default. It is submitted there is no possibility of execution of a builder buyer agreement because the property is indeterminate and also there are no specific terms that have been mutually agreed.
- v. That as per the averments made by the complainant, the complainant has claimed interest from the year 2009. However, the complainant has failed to establish as to how such a date of default has been calculated by the complainant.
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 2006. 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 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:

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. 39,00,000/- against the booked plot back in 2006, 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 delay possession charges alongwith prescribed rate of interest.

18. The complainants have booked a plot admeasuring 600 sq. yards in the future potential project by making a payment of Rs.39,00,000/- 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. Till date, the respondent has miserably failed to specify the project as well as plot number where 600 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.

19. 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.39 lakh for a future project which is not in existence.
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 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.
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., 15.10.2024 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 31.07.2009. However, despite receipt of Rs. 39,00,000/- against the booked plot back in 2006, 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. 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.II To execute a conveyance deed as per section 17 of the Act, in favour of the Complainant.

30. 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.
31. The respondent is directed to get the conveyance deed of the allotted unit executed 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.

H. Directions of the authority

32. 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 number to the complainant admeasuring 600 sq. yards as mentioned in the payment receipt dated 31.07.2006 issued by the respondent and enter into a registered agreement for sale with the complainant w.r.t the same within a period of 90 days.
- ii. The respondent/promoter is further 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., 31.09.2009 till offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession 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 31.09.2009 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 allottee 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 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 allottee, in

case of default i.e., the delayed possession charges as per section 2(za) of the Act 2016.

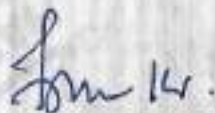
vi. The respondent is directed to handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.

33. Complaint stands disposed of.

34. 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