

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

Complaint no. : 523 of 2024
Date of complaint : 13.02.2024
Date of order : 07.05.2025

Sachin Goel,
R/o: - Flat No. 32, GH-7, Sector-5, MDC,
Panchkula, Haryana-134114.

Complainant

Versus

M/s Ramprastha Promoters & Developers Pvt. Ltd.
Regd. Office At: - Plot No. 114, Sector-44,
Gurugram, Haryana-122001.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Rishabh Jain (Advocate)
Vishal Majumdar (Advocate)

**Complainant
Respondent**

ORDER

1. The present 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 provisions 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 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.	Name of the project	Cannot be ascertained
2.	Project area	Cannot be ascertained
3.	Plot no.	Not Provided
4.	Plot area admeasuring	250 sq. yds. (Page no. 30 of the complaint)
5.	Date of booking	15.07.2013 (page 30 of complaint)
6.	Allotment letter	Not Provided
7.	Date of execution of plot buyer's agreement	Not executed
8.	Possession clause	Not Provided
9.	Due date of possession	15.07.2016 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
10.	Total sale consideration	Rs.6,50,000/- [As per CRA on page 29 of complaint]
11.	Amount paid by the complainants	Rs.6,50,000/- [As per receipt dated 15.07.2013 on page 30 of complaint]
12.	Occupation Certificate	Not Provided
13.	Offer of possession	Not Provided

B. Facts of the complaint

3. The complainant has made the following submissions: -
- I. That the respondent published very attractive brochure, highlighting the residential plotted colony situated at Gurugram, Haryana. The

respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy the plots in the future project including the complainant.

- II. That the complainant was approached by the sale representatives of the respondent, who made tall claims about their future project as the world class project. The complainant was invited to the sales office and was lavishly entertained and promises were made to him that the possession of his plot would be handed over in time including that of parking, horticulture, club and other common areas. The complainant was impressed by their oral statements and representations and ultimately lured to pay Rs.6,50,000/- to the respondent, Ramprastha Promoters and Developers Private Limited via cheque no. 000002 dated 26.06.2013 towards entire sale consideration for 250 square yards plot and the respondent issued payment receipt no. 077 dated 15.07.2013 to the complainant.
- III. That the respondent till date has failed to execute a plot buyer's agreement towards purchase of the aforesaid plot measuring 250 square yards at Gurugram, Haryana and has violated Section 13 of the Act, 2016 by taking more than ten per cent of the cost of the plot before the execution of the plot buyer's agreement. The due date of offer for possession comes out to be 15.07.2016 based on the ratio laid down by the Hon'ble Supreme Court judgment in Fortune Infrastructure vs Trevor D Lima [2018] 5SCC 442] and Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan [(2019) SC 725].
- IV. That the complainant recently wrote an email dated 19.05.2023, to the respondent seeking information about the status of physical offer of possession of the plot but to no avail as the respondent failed to submit

any justified response. Rather, the respondent informed via email of even date that the company is in the process of obtaining HRERA registration.

- V. That the complainant approached the respondent and pleaded for delivery of possession of his plot on various occasions. The respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of his plot, thereby the respondent violated Section 19 of the Act, 2016.
- VI. That the respondent is responsible and accountable towards the lawful rights of the allottee. The respondent is bound to pay the interest on the deposited amount to the complainant if there is a delay in handing over the possession of the plot. The respondent has in an unfair manner, siphoned off funds meant for the project and utilised same for its own benefit for no cost.
- VII. That the respondent, despite promising the complainant that the physical possession of the plot would be delivered in timely manner, has neither allotted any plot till date, nor has paid any interest for delay on the paid amount. Thus, it constitutes unfair trade practices & deficiencies in service and cheating.
- VIII. That by delaying possession, the respondent has unjustly enriched himself by taking complete payable amount and additional charges from the complainant and thereafter utilizing that huge money on other projects and left the complainant high and dry at his own fate.
- IX. That, the complainant has suffered financial losses and mental agony & harassment as a result of the aforesaid deficiencies in services. The complainant is the worst sufferer due to the greed of the respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondent to allot a plot, handover possession of the plot and to pay delay possession charges.
 - II. Direct the respondent to pay legal expenses.
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 authority observes that on 12.12.2024, the counsel for the complainant has filed an application for impleadment/substitution of M/s Ramprastha Promoters & Developers Pvt. Ltd. stating that in the memo of parties, M/s Ramprastha Estate Pvt. Ltd. has been impleaded in place of M/s Ramprastha Promoters & Developers Pvt. Ltd. and it was mistakenly stated in memo of parties that M/s Ramprastha Estate Pvt. Ltd. was formerly known as M/s Ramprastha Promoters & Developers Pvt. Ltd. Accordingly, vide proceedings dated 18.12.2023, the application for impleadment/substitution was allowed and notice was issued to M/s Ramprastha Promoters & Developers Pvt. Ltd. with a direction to file reply in the matter within a period of 30 days from the date of receipt of that notice and to appear on the date fixed i.e. 19.03.2025, failing which its defence shall be liable to be struck off. On date fixed, i.e. 19.03.2025, Advocate Vishal Majumdar appeared and filed memo of appearance on behalf of M/s Ramprastha Promoters & Developers Pvt. Ltd. and sought an adjournment to file reply in the matter. It was observed that despite specific directions for filing of reply, the respondent has failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the



procedure of the court by avoiding filing of written reply. However, in the interest of justice, the respondent was given a liberty to file written submissions within a period of two weeks, but the same has not been submitted by it till date. Therefore, in view of above, the defence of the respondent is hereby struck off.

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

E. Jurisdiction of the authority

8. 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

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made

thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. 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.

F. Findings on the relief sought by the complainant

F. I Direct the respondent to allot a plot and handover possession of the plot and to pay delay possession charges.

12. The complainant had booked a plot admeasuring 250 sq. yards. in futuristic project of the respondent by paying an amount of Rs.6,50,000/-. On 15.07.2013, the respondent issued a payment receipt bearing no. 077 for the said payment. It is important to note that no plot buyer agreement has been executed between the parties. The complainant has paid Rs.6,50,000/- as booking amount to book a plot in the futuristic project in the year 2013, but no such plot number was allotted to him. Even no completion date, no basic price was mentioned in the receipt. Thus, in view of the foregoing facts the respondent who has accepted an amount of Rs.6,50,000/- since 2013 has been in custody of the money paid for allotment of the plot and has been enjoying benefits out of it.
13. Now the question before the authority is whether the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of The Contract Act, 1872 and which provides that:

"Every promise and every set of promise forming the consideration for each other is an agreement."

14. Further, section 10 of the Act of 1872 defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

15. There are a large number of cases coming to the notice of the authority wherein the promoter had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither has the promoter issued any allotment letter nor executed any buyer's agreement in this regard. The document/receipt so issued in favour of a person can be termed as an agreement for sale to put the developer before RERA Authority, compelling it to fulfil its obligations against the holder of that document. The promoter is duty bound to explain the reasons for which it has admittedly retained the consideration amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC).

16. The Authority observes that despite receipt of considerable amount of money against the booked plot back in 2013, the respondent-promoter has neither specified the project details to the complainant nor has allotted a specific plot number to the complainant and has also failed to enter into a written agreement for sale with respect to the same with the complainant.

17. The abovementioned issue has already been dealt by the Haryana Real Estate Regulatory Authority, Panchkula in the case titled as ***Nishant Bansal VS M/s Parsvnath Developers Limited decided on 11.03.2020***, wherein the following has been observed:

15. For the reasons recorded above, the complaints are allowed and the respondent is directed to allot and deliver the possession of booked plots

to the complainants in the project Parsvnath City, Sonipat on payment of balance sale consideration recoverable from them. The respondent shall comply with these directions within 90 days from the date of uploading of this order. **In case the respondent due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it from the open market at his own cost.** The respondent however will be entitled to recover from the complainants the balance amount payable by them as per the rate agreed by the parties at the time of booking of plots.

18. Moreover, the respondent/applicant has filed an appeal before The Haryana Real Estate Appellate Tribunal, and the same was decided on 31.10.2022, and the Hon'ble Appellate Tribunal observed that:

23. "The submission of the learned counsel for the appellant that the directions given by the learned Authority in the impugned order that the appellant is liable to make available to the respondents/allottees plots of the size, as booked, by purchasing the same from the open market at its own costs are not feasible, is also without any substance because it is established on the record that the appellant had sold the plots which were meant for the respondents/allottees, at premium by ignoring the legitimate rights of the respondents/allottees for allotment of the plots and the appellant/promoter had earned premium by effecting the illegal sales. Once this fact has been established that the appellant/promoter by ignoring the legitimate and legal claim of the respondents/allottees, had sold the plots meant for them on premium to other persons, the learned Authority under Section 37 of the Act, is competent to issue directions as it may consider necessary.
24. Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondents/allottees in the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter, interest for every month of delay till the handing over of the possession, as such rate as may be prescribed. Accordingly, the respondents/allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.
25. Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along



with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer."

19. In view of the reasons stated above and judgement quoted above, the respondent is directed to allot a specific plot number and issue allotment and execute the buyer's agreement of the said plot allotted to him within a period of 90 days from the date of uploading of this order. In case, respondent/ promoter due to non-availability of plots is not able to allot and offer its possession to the complainant in any existing project, it will be liable to make available to him a plot of the size, as booked, specifying the future upcoming project wherein specific plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
20. Now, the issue which needs adjudication in this complaint is whether complainant is entitled to the relief of possession of plot booked by the complainant along with interest for delay in handing over the possession in absence of allotment letter and builder buyer agreement.
21. 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."

22. In the instant matter, even after lapse of more than 11 years from the date of payment till the filling of complaint, no allotment letter and buyer's agreement has been executed inter-se parties. Even till date, the respondent has miserably failed to specify the project name as well as plot number where 250 sq. yards. has been allotted. Further, the

respondent fails or surrender its claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.

23. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
24. The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*** observed that *"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."*
25. In view of the above-mentioned reasoning, the date of payment made vide receipt dated 15.07.2013, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 15.07.2016, manifesting that there has been a delay of more than 8 years in handing

over possession, making the respondent liable to pay delay possession charges as per Section 18 of the Act, 2016 along with possession.

26. Payment of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges at the 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.

27. 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.

28. 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., 07.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

29. 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.

30. 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 him in case of delay possession charges.

31. 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 15.07.2016. However, the respondent/promoter has not allotted a specific plot number to the complainant and also has failed to handover possession of the plot to the complainant till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to allot a specific unit number and hand over the physical possession. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the booked plot to the complainant. 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.

32. 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. 15.07.2016 till the date of offer of possession plus two months after obtaining completion certificate/part completion certificate or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules.

F.II Direct the respondent to pay cost of litigation.

33. The complainant is seeking above mentioned relief w.r.t. compensation. *Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* has held that an allottee is entitled to claim compensation and 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 and 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 and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

G. Directions of the authority

34. 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 and issue allotment and execute the buyer's agreement of the said plot allotted to him within a period of 90 days from the date of uploading of this order. In case, respondent/ promoter due to non-availability of plots is not able to allot and offer its possession to the complainant in any existing project, it will be liable to make available to him a plot of the size, as booked, specifying the future upcoming project wherein specific plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
- ii. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 15.07.2016 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 15.07.2016 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 respondent is further, directed to handover the physical possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.
- vi. 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 delay possession charges as per section 2(za) of the Act.

35. Complaint stands disposed of.

36. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.05.2025