

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

Complaint no. : 6290 of 2022
Complaint filed on : 07.10.2022
Date of decision : 04.03.2025

Ex. Hav Arun Kumar Dagar

R/o: - H.no.300, near Bhim General Store village &
Post Office Malikpur Najafagarh, New Delhi

Complainant**Versus****Army Welfare Housing Organisation**

Office at: South Hutment, Rajaji Marg, Kashmir office,
New Delhi-110011

Respondent**CORAM:**

Shri Arun Kumar
Shri Vjay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Kanish Bangia (Advocate)
Shri Aditya Bhardwaj (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 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. No.	Particulars	Details
1.	Project name and location	Shanti Vihar, (Tower A to R), Sector 95, Wazirpur, Gurugram
	Project area	24.53 acres
	Nature of the project	Group Housing Project [As per data available on RERA website]
2.	DTCP license no. and validity status	40 of 2010 dated 28.05.2010 valid till 27.05.2025
	Name of licensee	Ramprastha Infratech Pvt. Ltd. and Others [As per data available on RERA website]
3.	HRERA registered/ not registered	08 of 2018 dated 04.01.2018 [Valid up to 31.12.2020] [As per data available on RERA website]
4.	Application dated	23.02.2011 [pg. 36 of complaint]
5.	Allotment letter dated. (without specifying any unit no.)	31.03.2011 [pg. 44 of complaint]
6.	Allotment letter dated. (Allotting specific unit after draw)	24.02.2020 [pg. 106 of complaint]
7.	Unit no.	0902 on 9 th floor of block M [pg. 106 of the complaint]
8.	Unit measuring	1400 sq. ft., Type- Deluxe Apartment [pg. 46 of the complaint]
9.	Date of execution of buyer's agreement	Not executed
10.	Due date of possession [as per allotment letter dated 31.03.2011]	8 As per plans, your DU is expected to be ready for handing over by Dec 2015 [pg. 51 of complaint]
11.	Revised due date as per letter dated 07.08.2018	December 2019 [pg. 101 of complaint]
12.	Total sale consideration as per allotment letter dated 31.03.2011	₹ 46,20,000/- [pg. 46 of complaint]
13.	Cost escalation as per letter dated 07.08.2018	₹3,67,000/- [pg. 101 of complaint]
14.	Amount paid as alleged by the complainant	₹55,40,324/-
15.	Occupation certificate	18.12.2020

		[pg. 73 of reply]
16.	Offer of possession	July 2021 [As per page 23 of reply] Mail dated 04.01.2022 at pg. 76 of reply

B. Facts of the complaint

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

- a. That on dated 23.02.2011, vide registration form complainant booked a residential flat in project name "**Shanti Vihar**" [*turnkey group housing project – as per document pg. 48*] (*hereinafter called as 'project' in question*), located at Sector-95, Wazirpur, Gurugram, Haryana and paid a booking amount of Rs.75,600/- vide DD no 002997 dated 23/02/2011, to the respondent, which was duly acknowledged by the respondent vide acknowledgment receipt dated 08.03.2011 and complainant received provisional allotment registration letter on dated 31.03.2011.
- b. That on **19.07.2011**, respondent had given the booking/introductory letter to complainant in which respondent had informed regarding importance of location aspect, all 4 types of layouts which they are going to introduce in which buyer can choose one, basic price Rs.3300/- per sq. feet (Including taxes and levies by the Govt such as service tax etc.). Respondent had given the booking letter of the said dwelling unit (DU) on dated 19.03.2012 in which respondent had clearly mentioned the total cost of dwelling unit (DU) as Rs.46,20,000/- (excluding car parking cost approx. Rs. 2.80 lac,) and demanded Rs. 4,75,500/- regarding complainant's dwelling unit (DU), payment plan and date for to be ready handed over the dwelling unit (DU) by DEC 2015. Respondent demanded 85% of the total sale amount demanded within just 22 months from the date of issue booking letter and balance 5% before 3 months of possession of dwelling unit.

- c. That respondent had taken approx. Rs.30,03,500/- i.e., 65% payment of the total sale amount within just 7 months approx. (by 16.07.2012) from the date of issuing booking letter. Respondent along with delay in physical progress on site and had revised payment schedule without consent of complainant for the balance payment many times and on 29.06.2015 informed the complainant that they are going to introduce the provision of school in the project and had increase & imposed additional cost of Rs.1,19,000/- on the complainant that would be demanded along with final instalment and statement of accounts issued with handing/taking over instructions. Respondent vide letter dated 10.06.2016 conceded that progress at site is slow as per planned scheduled and vide letter dated 08.12.2016 informed complainant that now, they are going to increase electricity load capacity from 1.2KW to 5KW and had imposed additional cost of Rs.30,000/- for complainant's dwelling unit (DU). Respondent also mentioned in this letter that if they do not get any reply they would be consider as "Willing" and will take action accordingly.
- d. Respondent vide letter dated 07.08.2018 informed complainant that they have cancelled the construction contract with his contactors "M/s Ramprastha Promoters and Developers Pvt Ltd (RPDPL)" on behalf of inadequate physical progress of the project and going to finalize fresh contract for the balance construction work of the project with a PDC on Dec 2019 and escalate the cost of dwelling unit by 8%. i.e., Rs.3,67,000/- including the defect liability from 16 months to 60 months and demanded total Rs.8,16,000/-.
- e. The respondent had shared the allotment letter dated 24.02.2020 approx. 9 years from the date of booking & after taking amount of

Rs.52,05,500/- more than initially decided total consideration amount and respondent had charged delay payment penalty to complainant @ Rs.10% per annum.

- f. That the amount and dates of payment paid to the respondent company/ society as under:

Particulars	Amount Paid	Date of payment	Cheque/DD No & dated
Registration Fee	75,5 00	23/02/2011	002997, 23/02/2011
At the time of Booking of DU after minus Registration Fee- had to paid by 10/08/2011	4,00,000	08/08/2011	144861 to 144864, 08/08/2011 (1L x 4 Cheque)
25% of DU Cost (after deduct Registration and Booking amount) had to paid by 15/05/2012	2,25,000	17/04/2012	127564, 17/04/2012 for Rs. 55000/- and 045712, 17/04/2012 for Rs 1,70,000/-
Same as Above	4,55,000	11/05/2012	571327, 08/05/2012 for Rs. 3,00,000/- 137109, 08/05/2012 for Rs. 1,55,000/-
30% of DU Cost had to paid by 16/07/2012	8,56,000	06/07/2012	573571, 06/07/2012
Same as Above	5,30,000	16/07/2012	854396, 16/07/2012 paid through AGI Loan
10% of DU Cost had to paid by 09/10/2012	4,62,000	03/10/2012	137105, 03,10,2012
10% of DU Cost had to paid by 25/10/2013 (Revised dates shared by Respondent)	4,62,000	22/10/2013	000015, 22/10/2013



10% of DU Cost had to paid by 03/06/2014 (Revised dates shared by Respondent)	4,62,000	29/05/2014	392233, 29/05/2014 For Rs 2,42,000/- and 000001, 29/05/2014 For Rs. 2,20,000/-
10% of DU Cost had to paid by 16/01/2017 (Revised dates shared by Respondent)	4,62,000	12/01/2017	000006, 13/12/2016 For Rs 4,00,000/- and 392261, 12/01/2017 For Rs. 62,000/-
Payment on behalf of project escalate the cost, Tentative car parking cost, School Construction cost and Enhance power back cost	8,16,000 (2,25,000 by 15/10/2018, 2,25,000 By 28/12/2018, 2,17,000 by 28/02/2019 and 1,49,000 By 31/05/2019)	11/11/2019	UTR SBIN11931515243 0, dated 11/11/2019 (Through Bank Loan)
Payment on behalf 5% cost of Dwelling unit, Society Corpus Funds, Facility Management Charges, Interest on delay payment @10% per annum and Rebate on Timely payment @1% on payment maid	3,34,824 With 1% rebate on actual payment if paid before due date (i.e. 28/05/2021)	15/05/2021	Rs. 35,200/- UTR SBIN12113597486 4, dated 15/05/2021 And Rs. 2,99,624/- UTR SBIN12113597486 4, dated (Through Bank Loan)
Total Amount Paid	55,40,324		

- g. That after the due date of possession respondent vide email dated 10.01.2018 informed the complainant that due slow performance in improvement work on 05.01.2018 contract with contractor i.e., M/s Ramprastha Promoter & Developers Pvt Ltd (RPDL has been cancelled.
- h. That respondent mis led the complainant and made changes in the due date of possession many times. Respondent vide his email dated

10.07.2020 informed new date of possession as September 2020 and later again vide email informed complainant regarding revised tentative date of possession as September 2021. That thereafter, when complainant on 19.08.2021 visited the dwelling unit at the site, he was shocked to see a lot of issue in regard to quality, finishing, fittings and seepage. Complainant informed the respondents with photographs of the issues and requested to rectify the same on priority basis. That the complainant had put an email to the respondent in this regard on 26.08.2021 and also shared some photo along with list on which improvement work had to be done by the respondent.

- i. That on 02.09.2021, complainant had written an email to the respondent to get update status of project and latest date of possession and also requested again to release the delay compensation charges which respondent had not yet released. On which respondent replied vide email dated 02.09.2021, confessed and informed to complainant that the unit is not yet ready for handover due to seepage related issue and that date of handover will be postponed.
- j. The complainant again put an email to the respondent on dated 15.11.2021 to get the update regarding the work progress which had to be done by the respondent as had mentioned in his earlier mail of dated 26.08.2021 & 14.10.2021 and how soon the respondent will release the delay compensation charges which respondent had not yet released.
- k. The respondent insisted many times to the complainant to take handover of dwelling unit via his email dated 22.03.22, 11.04.22, 21.04.22 & letter dated 29.08.22 without issuing an official possession letter along with certified copy of CC/OC, and without rectify the seepage issue, without share the corrective action taken yet on seepage

issue, without release any delay possession compensation.

- l. The complainant had put several mails to the respondent on dated 04.01.2022, 21.01.2022, 19.02.2022, 14.03.2022, and 28.03.2022 to get updates on the issue raised regarding finishing, fittings and seepage, but not any reply received in related to this issue. The complainant had also mentioned in his mail dated 28.03.2022 that how project directors treat him with abused language and they throne him out of his office. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainant.
- m. The complainant had put a mail to the respondent on dated 10.06.2022 and request to share the updated account statement along with Builder Buyer Agreement (BBA) as the respondent has not yet any type of BBA to the complainant. The respondent replied on the complainant mail of dated 10.06.2022 via his letter dated 11.07.2022 and informed that fresh account statement already shared on dated 22.06.2022 and as far as BBA is concern, the respondent had denied to share. Respondent inform to the complainant that the project had commence in 2012 whereas RERA come into force in 2016, Hence, builder buyer agreement is not applicable in my case.
- n. In this letter, respondent try to explain regarding one of his emails dated 04.01.2022, Here complainant wants to clear that he never received such type of email of dated 04.01.2022 even complainant request many times on email to share the certified copy of such mail but respondent never provide the certified copy of such Email. In this letter, respondent again wrongly insist to the complainant to take over the dwelling unit (DU) without issue an official possession letter along with certified copy

of CC & OC, without sharing the update regarding rectification of seepage issue, without sharing the corrective action taken to solve the seepage issue, without release delay possession compensation.

- o. The complainant finally, sent a letter to the respondent and copy to project director and director (marketing) through speed post on dated 02.09.2022 in which complainant mentioned that as I am ready to take possession of my dwelling unit but only after getting:
- The official letter of possession along with certified copy of CC, OC and other documents as per required by RERA ACT;
 - Delay possession charges @ 10% per annum on the total paid amount from the actual date of possession i.e. December 2015 to until respondent don't give the letter of possession along with documents required as per RERA ACT;
 - But not any reply received from Respondent side till date in this regard.
- p. As per clause no 41 of the master brochure shared by respondent, there is mentioned that the respondent will charge 10% interest if any payment not paid by allottee within the due date and as per clause no.74 of the master brochure shared by respondent, there is mentioned no compensation will be paid by the respondent (AWHO) to the allottee in case handing over of a dwelling unit is delayed for the reason beyond the control of AWHO. The complainant would like inform to Authority Gurugram that its violation of provision of RERA ACT section 2(za) - "Interest" means the rates of interest payable by the promoter or the allottee, as case may be.
- q. That the respondent failed to fulfil all the obligations on his part namely offer of possession, to abide by date of completion undertaken in



booking letter of dated 19.03.2012. The complainant time and again kept highlighting to the respondent about the misconduct on his part and sought a redressal of his grievances, but all in vain. Rather, the respondent sought payment of other charges from the complainant Like project escalate cost, school construction cost, irrespective of the fact that the complainant had made maximum payment on time when demanded despite the respondent failing to abide by the handing over possession of the unit in question.

- r. That till date, the respondent has failed to issue valid offer letter of possession along with certified copy of CC, OC and all related documents which is essential as per RERA Act and handing over possession of the unit and execute an agreement even after 8 years 7 months from the date of filled registration form. That the complainant has been severely exploited at the hands of the respondent as no prior permission was taken from him before impose escalate the project cost and school construction cost.
- s. That the respondent simply duped the complainant of his hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainant. Hence this complaint. That the present complaint has been filed in order to seek possession of the unit in question along with interest on the delayed possession along with the other reliefs as mentioned in the relief clause of the complaint. That as per section 11 (4) of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to adhere to the terms and conditions of the agreement and also to pay delayed possession interest to the allottees of an apartment, building or

project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

- t. That as per section 18 of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. That accordingly, the complainant herein is entitled to get interest on the paid amount at the rate as prescribed by the Haryana Real Estate (Regulation and Development) Rules, 2017 from due date of possession till the date of actual handing over of possession post receipt of occupation certificate, along with interest.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s)
- Direct the respondent to handover possession of the unit of complainant along with interest at prescribed rate of interest.
 - Direct the respondent to make the payment of Rs.37,39,715/- on account of delayed possession charges on total paid amount of Rs.55,40,324/- @10% per annum from the due date of possession till actual physical handover of possession along with Occupation certificate copy.
 - Direct the respondent to make payment of Rs.3,67,000/- on account of escalate the cost - 8% of the cost of dwelling unit (DU) which was illegally imposed on complainant and have been demanded without complainant prior consent.
 - Direct the respondent to make payment of Rs.1,19,000/- on account of school construction cost.

- e. Direct the respondent to make the payment of litigation expense and mental agony and mental stress.
 - f. Direct the respondent to issue letter of offer of possession along with certificate copy of CC, OC, along with all essential documents.
 - g. Direct the respondent to share current status report of concern dwelling unit (DU) in regarding free from any bad construction relate to seepage, plaster and flooring condition, electricity, door, window fittings ETC as complainant had put mail to respondent on dated 26.08.2021 & 14.10.2021.
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:
- a. That the respondent is Army Welfare Housing Organisation (AWHO), a 'No-Profit-No-Loss' society which came into existence from 20.03.1978 under the Indian Societies Registration Act XXI of 1860. The aim and objective of the organisation is to construct houses for the welfare of serving/retired Army personnel and their widows in selected stations throughout the country. It is submitted that AWHO's mission is to provide structurally sound, economically viable and functionally efficient dwelling units to the desirous serving/retired members of the Army and their Widows on a "NO PROFIT NO LOSS" basis. The endeavour of AWHO has always been to deliver good quality construction with environment friendly ambience to its allottees. AWHO plans holistic projects as mini townships with central amenities such as shopping complex, club, swimming pool, sports facility, CSD and

adequate green area with parking and water supply, all-inclusive within the cost as finally incurred by AWHO. AWHO is conscious of their charter for providing affordable housing with utmost dedication and with an emphasis on quality finished end product. Adjutant General (AG) of AG's Branch, South Block, Ministry of Defense is Ex-Officio Chairman of this organisation. All rules, regulations and policies are made with due approval of Board of Governor (BOG) & Executive Committee Meeting (ECM) which comprises of higher management in hierarchy of Ministry of Defence in Ex-officio capacity. Organisation sustains only 3% on establishment charge being collected from allottees. AWHO develops, as a welfare measure, all its group housing projects from the contributions made by the allottees apart from the short-term borrowings from the Financial Institutions like banks, HUDCO and National Housing Bank. Honorary members of the Board of Governors of Army Welfare Housing Organisation, apart from other very senior Army Officers comprising the Chief of Army Staff, Vice Chief of Army Staff, the Army Commanders and Adjutant General, Army Headquarters, who is also the Ex-Officio Chairman. The Managing Director of the AWHO is assisted by a team of executives who are specialists in their own faculties and includes planners, architects, Engineers, Surveyors, Project Managers and the necessary staff. Members of Board of Governors, and Executive Committee of the AWHO are appointed as Ex-officio Members of the AWHO by virtue of the appointment they tenet in the Army Head Quarters. The pay and allowance of this team is met out of the administrative charges received from the allottees @3%, since AWHO does not receive any grant/ financial assistance from the Government/ Army HQ or any other Organisation. Any amount received and not spent

is retained as reserve for creating land bank/ undertake common repair/ welfare projects for the benefit of the allottees.

- b. That any Army officer, personnel or their widow in order to apply under the projects, which are administered by the Respondent has to abide by the instructions under the master brochure of July and rules and regulations made by board of management and executive committee. That the allottees having affirmed to abide by such instructions, rules and regulations through an affidavit and forms of allotment have bound themselves to abide by such rules regulations as contracted between the Respondent and the Applicant.
- c. That the project in question is located in Sector-95 of Gurugram comprising of an area admeasuring 24.53 acres, over which license to establish group housing colony was granted by the Department of Town and Planning Haryana, on 28.05.2010 vide license bearing number 40 of 2010. The said license was initially given in favour of M/s Ramprastha Promoters and Developers Pvt Ltd. [hereinafter referred as Developer/Contractor] being the land owners. Accordingly, a Trunkey Project in the form of Shanti Vihar was planned on said land for entitled persons where M/s Ramprastha Promoters and Developers Pvt Ltd (RPDL) was to develop a project on behalf of AWHO and the allottees of AWHO were required to pay the instalment as agreed. On completion of the project M/s Ramprastha Promoters and Developers Pvt Ltd was to hand over the project to AWHO the respondent who intern were to hand over the same to the allottees. That AWHO issued letter dated 19.07.2011 which is attached with the complaint petition as Annexure 4 to wait listed candidates for Shishpal Vihar and other projects informing them about the details of the projects that is various kind of dwelling

unit planed, the area of such unit, probable cost of land, cost of construction, total cost schedule of payment etc. In case of these waitlisted candidates and others were interested in the projects they were required to pay and registration fee for firm registration. This letter had clearly mentioned that the project was being constructed by a renowned promoter/ developer M/s Ramprastha Promoters and Developers Pvt. Ltd. on Turnkey basis and in order to safe guard the interest of allottees AWHO asked said promoter to transfer and register the land and also transfer the license in the name of AWHO. Accordingly, the said promoter had demanded a sum of Rs.1400 per square feet of the saleable area. In order to ensure said payment and reduce the burden of financing of the cost of land on the allottees, cost of land along with 10-15% of initial expenses were planned to be recovered from the allottees at initial stage and accordingly first two instalment were planned to be recovered from the allottees vide para 3 of the booking letter dated 19.03.2012 which is attached with complaint petition as Annexure -5. It is pertinent to mention here that the said amount recovered as cost of land had been spent by the respondent to meet such cost of land and initial expenditure in the form of payment to M/s Ramprastha Promoter and Developers Pvt Ltd @ ₹1400/ per sq. ft. as agreed and communicated to allottee vide complaint petition Whatever appreciation in the cost of such land has occurred has gone to the complainant.

- d. That the respondent had issued booking letter dated 19.03.2012 with tentative schedule of payment in 7 instalments. The 7th instalments consisting of 5% of the cost of dwelling unit plus any other facilities including car parking was to be paid 3 months before the possession of



dwelling unit. It was clearly spelt out in paragraph 3 of the note that dates of payment of the instalments may be change as per LOI/contract clause depending upon the progress of the construction and it will be intimated to allottees and it will be put on AWHO website. Serial 7 of table at paragraph 3 clearly mention the date of possession shall be intimated later thus this letter has given only probable date of completion and no were promised the date of possession. It requires worth mention that the said tentative schedule and tentative cost, was given by the respondent on the assurances and representations given by the RPDPL with respect to the timely development of the project. It was within the positive knowledge of the applicant that, the project being developed is on Turnkey basis and it shall be contractor who shall execute the project, and role of the respondent shall be of supervision.

- e. That the respondent based on the representations given by the contractor, with respect to timely development of the project awarded work contract to RPDPL. That initially the RPDPL in order to gain trust of the respondent started the execution of the project with a fair pace. However, after a few months of receiving substantial amount under the work contract, the performance of the RPDPL in the project was found to be slow and not satisfactory.
- f. That the respondent did all the actions to pursue the RPDPL to expedite the work and complete the project. On the assurance of the RPDPL the respondent also gave extensions for the completion of the project and even financially supported the RPDPL. But finally, when in January 2018 the promoter M/s Ramprastha Promoters and Developers Pvt. Ltd. failed to mobilized the requisite resources at site of work, the work contract with the RPDPL was terminated by respondent by invoking risk

and expense clause against the contractor. However, the recovery of amount from the contractor was likely to take time as it involved litigation, it was decided to charged cost of completion of the work from the allottees and refund the same as and when the same is recovered from the contractor beside other recoveries on various counts. In order to work in a transparent manner, the complete details were conveyed to the allottees including the complainant vide letter dated 07.08.2018 and 04.10.2018. In letter dated 04.10.2018 the allottees were even explained how much of the amount has been paid to M/s Ramprastha Promoter and Developers Pvt. Ltd. and that the interest occurred on the balance amount available with the respondent was credited in the project account. At the same time the allottees including the complainant were given option to withdraw from the project without any penalty vide letter dated 11.05.2018.

- g. That the respondent has filed arbitration against the contractor in which an amount of Rs.370.37 Crores (approximately) has been claimed under the various heads by the respondent. The respondent has also stated to the allottees, that as and when the amount under the arbitration will be awarded in favour of the respondent, the same shall be credited into project account and the surplus in the said account will be refunded to allottees on pro rata basis. That the role of the respondent in the projects which are being developed under the aegis of the respondent is supervision, quality control, inspection and development. The respondent by terminating the contract with the erstwhile developer acted in the best interest of the allottees, as a result of same there are currently a huge number of families which are staying in the said project.

- h. That has already stated the respondent charges only 3% of the basic selling price to meet out salaries of its employees and office and administrative expenses. It is for this reason in para 74 of the Master Brochure July 1987, it has been stated that no compensation will be paid by the respondent to the allottee in case of handing over of the dwelling unit is delayed for the reasons beyond the control of the respondent. The para 74 is mentioned below for the ready reference "Para 74 – delay in handing over of the dwelling unit. No compensation will be paid by AWHO to the allottees in case handing over of the dwelling unit is delayed for the reasons beyond the control of AWHO." The complainant in its own petition has miserably failed to disclose even a single instance which can lead to a conclusion, that Respondent was negligent in performance of its duties under the Turnkey work contract or otherwise. That the applicant today enjoys the escalation on account of boom in the real estate sector. It requires worth mention that the nearby developers are charging on an average an amount of Rs. 5800 to 8800 per square feet towards the cost of apartment.
- i. That the Hon'ble Tribunal in the matter of ***Manoj Kumar vs. AWHO complaint no 4215 of 2020*** has dealt with the identical issues which has been raised in the present complaint. It has been held that the respondent providing homes at no profit no loss basis, hence not liable to pay delayed possession charges. Further in the matter of ***Raman Myer Vs. Army Welfare Housing organization*** vide order dated 16.06.2022, it has been observed by Hon'ble Real Estate Regulatory Authority Punjab that respondent being a "**No Profit No Loss**" Organization has to be treated different from the promoters who carry

out their business with profit as motive. The relevant excerpt from the judgment is as follow:

"..... The respondent being a non-profit earning welfare Society, tasked with the construction of dwelling units, for army personals and their widows, on "No Profit No Loss" basis has to be treated different from other promoters, who carry out their business with profit as motive"

- j. That the respondent be treated differently from the promoters as it is a Welfare Society providing house to Army personals and their widows on "**No Profit No Loss**" basis as welfare measure to serve Army persons and widows. Even if it is assumed for the moment that the respondent falls within the realms of Real Estate (Regulation of Development) Act 2016, then to no action should be taken against the respondent for the reasons stated hereinabove.
- k. That the possession has been offered to the complainant way back in July 2021 and in January 2022 the respondent had offered such possession after rectifying all issues projected by the complainant and even this completion certificate of the project was received as on that date. It is with the intent to create a false cause of action the complainant avoided to take possession and present complaint has been filed.
- l. That the respondent relies on the content of the foregoing paragraph and the same are not repeated herein for the sake of brevity. It is submitted that the respondent is a "No Profit No Loss" Organisation for the betterment of the Army personals and their widows, the respondent renders its services on a meagre charge of 3% unlike developers who charges handsome premium while selling the Apartments. The project Shanti Vihar, Sector-95 Gurugram was conceptualized much before enactment of RERA Act -2016 and due to default of the Turnkey contractor it was completed after introduction of RERA Act-2016. Under

the peculiar/facts and circumstances of the case, the complainant is not entitled to compensation as contended in these paragraphs as neither the respondent has made disproportionate gain nor caused a disproportionate loss to the complainant as contemplated in Section-72 of RERA Act. That the possession has already been offered to the complainant and conveyance deed is being executed in favour of the allottees in accordance with law.

m. All other averments made in the complaint were denied in toto.

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 submissions made by the parties.
8. Written submissions filed by the complainant and respondent are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

9. The objection of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. 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) 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 contentions raised by the respondent in its reply:

F.I Plea taken by the respondent for considering the decision already taken by this authority in case titled *Manoj Kumar vs. AWHO* complaint no 4215 of 2020 vide order dated 17.11.2021.

13. The respondent, in its reply, contends that this Hon'ble Authority has previously rendered a decision in respect of the same project being developed by the respondent in the matter of ***Manoj Kumar vs. AWHO, complaint no. 4215 of 2020***, wherein it was determined that the respondent, being a "no profit no loss" organization, is not liable for delay in possession charges under Section 18 of the Real Estate (Regulation and Development) Act, 2016. The Authority, after reviewing the facts of the

aforementioned case, hereby clarifies that, although the matter pertains to the same project, the facts in the present case and those in the previous matter are fundamentally different. In both instances, the Authority considered the due date of possession as indicated in the letter dated 07.08.2018 sent by the respondent, which was prompted by the cancellation of the contract with the contractor. However, it is noted that in the earlier case, the complainant's unit was changed at the complainant's request, and a new unit was allocated with a revised possession date. Subsequently, the respondent offered possession of the new unit after obtaining the occupancy certificate (OC) from the competent authority, prior to the lapse of the due date for possession, and as such, no delay in possession was established, and delay possession charges were not imposed. The circumstances in the present case, however, are distinct. Therefore, the Respondent's request for the Authority to adopt the same view as in the earlier case is hereby rejected.

G. Findings on the relief sought by the complainants:

G.I. Direct the respondent to make the payment of Rs.37,39,715/- on account of delayed possession charges on total paid amount of Rs.55,40,324/- @10% per annum from the due date of possession till actual physical handover of possession along with Occupation certificate copy.

14. 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."

15. Clause 8 of the booking letter provides for handing over of possession and is reproduced below:

"8

As per plans, your DU is expected to be ready for handing over by December 2015."

16. The authority has gone through the possession clause of the agreement and observed that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of flat buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession.

17. Admissibility of delay possession charges at prescribed rate of interest:

It is not disputed that the complainant was allotted unit number 0902, block M vide letter of allotment dated 31.03.2011 for a total sale consideration of ₹46,20,000/-. That was later on increased by ₹3,67,000/- vide letter dated 07.08.2018 by the respondent-society. Though no builder buyer agreement has been executed between the parties, but the terms and conditions of allotment have been retained in letter of booking dated 19.03.2012. It is an admitted fact that the complainant has paid a total sum of ₹55,40,324/- against the total sale consideration. Earlier the due date of handing over of allotted unit was fixed as December 2015 but the same was revised as per clause 1 of letter dated 07.08.2018, as December, 2019. It is also a fact that from time to time the payment schedule to be paid by the allottees including the complainant were changed keeping in view the schedule of construction and summarized as under-

S.no	Installment	Original due date	Revised due date
1	4 th installment	08.08.2013	25.10.2013
2	5 th installment	11.11.2013	27.02.2014
3		27.02.2014	03.06.2014

4	6 th installment	09.06.2014	04.09.2014
5		04.09.2014	08.01.2015
6		08.01.2015	07.12.2015
7		07.12.2015	04.03.2016
8		04.03.2016	15.06.2016
9		15.06.2016	30.11.2016

18. It is also fact that after termination of contract of M/s Ramprastha Infratech Pvt. Ltd. with regards to construction of dwelling unit. The complainant was given an option vide letter dated 11.05.2018 to withdraw from project. Now in the circumstances detailed above, it is to be seen whether the complainant is entitled for delayed possession charges against the allotted unit.
19. The respondent society was formed for providing DU to the serving/ retired personals as well as their widows all over India with no profit no loss basis. The project namely "Shanti Vihar" consisting of tower A to R was plotted by the respondent for providing DUs to serving/retired army personals as well as their widows all over India. In pursuant to request made by the complainant he was allotted a unit detailed above by the respondent society vide its letter dated 31.03.2011. Though the project was to be completed by December, 2015 and the possession of the allotted unit was to be delivered after that. But that's schedule could not be adhered to, for the one reason or the other and resulting in rescheduling of payments to be received from the allottees from time to time as detailed earlier. Even the allottees including the complainant was duly informed about the same and no objection at any point of time was raised with regards to rescheduling of payment schedule and time to complete the project. Also, it is pertinent to mention here that the possession of the said unit has been handed over to the complainant as on date.

20. Lastly, the complainant was also given an option in between vide letter dated 11.05.2018 to withdraw from the project due to delay in completion of project, change of contractor and escalation in cost of the unit. However, neither any objection to the same was raised nor the complainant opted out of the project. The occupation certificate of the project was received on 18.12.2020 from Directorate of Town and Country Planning, Chandigarh and in pursuant to which the respondent society started offering possession of the allotted units to different allottees.
21. Also, the respondent in its reply contends that respondent being a "**No Profit No Loss**" Organization has to be treated different from the promoters who carry out their business with profit as motive. As far as the liability of the respondent under the RERA Act, 2016 is concerned it would be relevant to refer the definition of the term 'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

2. Definitions: -

(zk) "promoter" means

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) xxxxxxxx

22. The authority observes that a person who constructs or causes to be constructed a building or apartments is a promoter if such building or apartments are meant for the purpose of selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures

on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose of sale is a promoter. Hence, the respondent is expressly covered under the definition of promoter under Section 2 (zk) of the Act, 2016 and therefore is obligated under the provisions of the Act, 2016.

23. As mentioned earlier the occupation certificate of the project has already been received on 18.12.2020 and according to which respondent society has offered possession of unit different allottees including the complainant on 04.01.2022.
24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 as agreed. By virtue of letter dated 07.08.2018, the possession of the said unit was to be delivered by Dec, 2019. Therefore, the due date of handing over possession comes out to be 31.12.2019. In the present case, the complainant was offered possession by the respondent on 04.01.2022 after obtaining occupation certificate dated 18.12.2020 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement annexed but not executed between the parties.
25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 18.12.2020. However, the respondent offered the possession of the unit in question to the complainant only on 04.01.2022,

so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 31.12.2019 till the expiry of 2 months from the date of offer of possession (04.01.2022) which comes out to be 04.03.2022.

26. 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 prescribed rate of the interest @ 11.10% p.a. w.e.f. 31.12.2019 till 04.03.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules. Further, the complainant allottee shall not be entitled to the delay compensation claim filed by the AWHO against the contractor of the project i.e., M/s Ramprastha Promoters & Developers Pvt. Ltd.

G.II. Direct the respondent to handover possession of the unit of complainant along with interest at prescribed rate of interest

G.III. Direct the respondent to issue letter of offer of possession along with certificate copy of CC, OC, along with all essential documents.

G.IV. Direct the respondent to share current status report of concern dwelling unit (DU) in regarding free from any bad construction relate to seepage, plaster and flooring condition, electricity, door, window fittings ETC as complainant had put mail to respondent on dated 26.08.2021 & 14.10.2021.

27. The complainant has already taken the possession of the said unit on 29.06.2024 as per the statement recorded at bar vide proceedings dated

28.01.2025. The respondent has already obtained the OC from the competent authority on 18.12.2020.

G.V. Direct the respondent to make payment of ₹3,67,000/- on account of escalate the cost - 8% of the cost of dwelling unit (DU) which was illegally imposed on complainant and have been demanded without complainant prior consent.

G.VI. Direct the respondent to make payment of ₹1,19,000/- on account of school construction cost.

28. The respondent shall not charge anything which is not the part of BBA.

G.VII. Direct the respondent to make the payment of litigation expense and mental agony and mental stress.

29. In the above-mentioned relief, the complainant sought the compensation and Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357), has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & 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

30. 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):

- a. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 31.12.2019 till 04.03.2022 i.e., expiry of 2 months from the date of offer of possession (04.01.2022). The arrears of interest accrued so far shall be paid to the

complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- b. The complainant allottee shall not be entitled to the delay compensation claim filed by the AWHO against the contractor of the project i.e., M/s Ramprastha Promoters & Developers Pvt. Ltd.
- c. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

31. Complaint stands disposed of.

32. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.03.2025