

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

Complaint no. : 266 of 2023
Date of filing : 18.01.2023
Date of decision : 20.05.2025

Hoshiyar Singh
R/o: - D-128, Ground Floor, Sushant Lok-III,
Sector-57, Gurgaon

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 Sushil Yadav
Shri Navneet Kumar

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 18.01.2023 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Ramprastha City, Sector 92, 93 and 95, Gurugram, Haryana
2.	Project area	Cannot be ascertained
3.	Plot no.	A-209 (page 14 of complaint)
4.	Unit area admeasuring	250 sq. Yds. (Page 14 of the complaint)
5.	Date of allotment	18.08.2016 (Page 14 of the complaint)
6.	Date of execution of plot buyer's agreement	02.09.2016
7.	Possession clause (11)	The Company shall endeavor to offer possession of the said plot, within 30 months from the date of execution of this agreement subject to timely payment by the intending allottee(s) of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan.
8.	Due date of possession	02.03.2019 (calculated 30 months from the date of buyer agreement)
9.	Basic price of the plot	NIL (adjusted against consideration of collaboration agreement) (as per payment plan on page 34 of the complaint)
10.	Amount paid by the complainant	Fully paid as alleged by the complainant
11.	Occupation certificate/completion certificate	Not obtained

12.	Offer of possession	Not offered
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B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- i. That the respondents approached the complainant about their forthcoming project named "Ramprastha City, Sector 92,93,& 95, Guragon", promising various advantages, like world class amenities and timely completion/execution of the project etc. relying on the promise and undertakings given by the respondents in the aforementioned plotting scheme ,the complainant executed the **Development/Collaboration Agreement dated 14-11-2008** with the respondents.
- ii. The complainant is the lawful owner of land measuring 0 acres 4 **Kanal 16 Marla i.e** Khewat/Khata no. 313/398 Min Rect no. 82 Kila No.19/2(4-16) Kita 1 Total Are 4 Kanal 16 Marla Situated in revenue estate of Village Wazirpur of tehsil and Distt Gurugram. The respondent approached the complainant and represented themselves as we are engaged in the development and construction of Various types of building and are well reputed and experienced in the line of business and in a position to obtain permission for change of land /obtain license etc to collaborate with them in the execution and completion of the said plotted residential complex on the said land.
- iii. That as per the **Development/Collaboration Agreement** under owner allocation .The Owner shall be entitled to get 1250 Sqyds of plot per acre which comes out to be 750 Sqyds Developed area against Owners Land.

- iv. That as per Clause 14 of the **development/collaboration agreement** it is agreed between the parties that in lieu of the owner /complainant providing his land free of cost to the developer, the developer shall deliver/handover the possession free of the cost to the owner, of the owners fully developed share in fully/developed land free of cost within 36 months from the date of letter of intent given by the Government of Haryana.
- v. That thereafter the respondent issued allotment letter dated **18.08.2016** and allotted a residential **Plot No. A -209** Admeasuring **250 Sqyds** in aforesaid project of the respondents.
- vi. That plot buyers agreement was executed on dated **02.09.2016** and as per BBA the respondents had allotted a plot bearing No.**A-209** having area of **250 Sq.yd.** to the complainant.
- vii. The complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It appears that respondents has played fraud upon the complainant. The only intention of the respondents was to take payments for the plot without completing the work and not handing over the possession on time. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant.
- viii. That despite receiving of 100% payments on time for all the demands raised by the respondents for the said plot and despite repeated

requests and reminders over phone calls and personal visits of the complainant, the respondents has failed to deliver the possession of the allotted plot to the complainant within stipulated period.

- ix. That due to this omission on the part of the respondents the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondents had given possession of the plot on time. That as per clause 11(C) of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.90/- per sq.yd. per month of the total area of the plot. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.90/- per sq.yd per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the plot even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs.90/- per sq.yd for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges @ 24% per annum interest on delayed payment.

C Relief sought by the complainants: -

4. The complainants have sought following relief(s)
- I. Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.

5. The authority issued a notice dated 18.01.2023 of the complaint to the respondent by speed post and also on the given email address at response@ramprastha.com for filing reply within 30 days. The counsel for the respondent appeared on many dates i.e. 28.04.2023, 21.07.2023, 17.09.2024, 19.11.2024 and 04.03.2025, yet failed to file reply to the complaint within the stipulated period despite given ample opportunities. It shows that the respondent was intentionally delaying the proceedings by avoiding filing of written reply. Therefore, in view of above, vide order dated 21.07.2023, the defence of the respondent was struck off.
6. 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 complainant.

D. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

D. I Territorial jurisdiction

8. 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.

D.II Subject matter jurisdiction

9. 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.

10. 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.

E Findings on the relief sought by the complainants.

E. I Direct the respondent to pay delay possession charges along with prescribed rate of interest.

11. The complainant is the lawful owner of land Measuring 0 acres **4 Kanal 16 Marla i.e.** Khewat/Khata no. 313/398 Min Rect. no. 82 Kila No.19/2(4-16) Kita 1 Total Are 4 Kanal 16 Marla Situated in revenue

estate of Village Wazirpur of tehsil and Distt Gurugram. The respondent approached the complainant collaborate with him in the execution and completion of the said plotted residential complex on the said land and executed the **Development/Collaboration Agreement dated 14-11-2008** with the respondent.

12. In terms of the collaboration agreement, the complainant is entitled to get 1250 sq.yd. of plot per acre which comes out to be 750 sq.yds for the collaboration land. In the present complaint, out of 750 sq.yds., the respondent allotted plot no. A-209 of 250 sq.yds in Ramprastha City, Sector 92,93 and 95. Thereafter, plot buyers' agreement was executed between the parties on 02.09.2016 and possession was to be handed over by 02.03.2019.
13. Now the question arises, whether the complainant is allottee or not as the unit has been allotted in terms of the collaboration agreement. As per the provisions of the Real Estate (Regulation and Development) Act, 2016, the term "allottee" is defined under Section 2(d) , a person to whom a plot, apartment, or building has been allotted, sold, or otherwise transferred by the promoter, and includes a person who subsequently acquires the said allotment through sale, transfer, or otherwise. In the present case, if the complainant has been allotted a unit pursuant to a collaboration agreement, it is essential to ascertain whether such allotment confers upon the complainant the legal status of an allottee within the meaning of the Act. Mere allocation of a unit under a collaboration agreement, in the absence of an agreement for

sale or any registered conveyance deed, may not ipso facto render the complainant an allottee under the Act. But in the present case, not only a specific unit was allotted by the promoter and such allotment carries a vested legal right or interest in the property but also a builder buyer agreement is executed with the complainant landowner.

14. 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, —

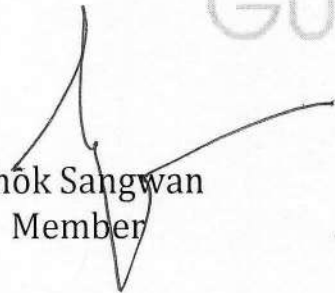
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. It is pertinent to mention here that the complainant did not pay any consideration to the respondent-promoter under the terms of the collaboration agreement executed between the parties. As per the agreed terms and the documented payment plan, the amount of sale consideration is explicitly mentioned as NIL. Furthermore, the available records clearly indicate that no monetary payment was ever made by the complainant to the respondent towards the cost of the unit. Since the claim for delayed possession charges typically arises under Section 18(1)(a) of the RERA Act, where an allottee is entitled to interest for delay in possession only if consideration amount is specified, the complainant is not entitled to relief of delay possession charge under this provision. Therefore, in the absence of any financial contribution from the complainant, the

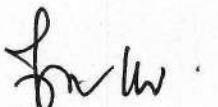
claim for DPC is not maintainable. However, the respondent is directed to handover the possession of the unit to the complainant within one month and also to execute the conveyance deed in favour of the complainant within 2 months

F. Directions of the authority

16. 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 is directed to handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.
 - ii. 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.
17. Complaint stands disposed of.
18. File be consigned to registry.



Ashok Sangwan
Member



Arun Kumar
Chairman



Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025