



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

Complaint no. : 2147 of 2024
Date of complaint : 20.05.2024
Date of order : 30.07.2025

1. Rajesh Kaushik,
2. Mahesh Kaushik,

Both R/o: - A-56, Anoop Nagar, Uttam Nagar,
New Delhi-110059.

Complainants

Versus

M/s Ramprastha Promoters and Developers Pvt. Ltd.

Regd. office at: - Plot No. 114, Sector-44,
Gurugram-122002.

Also at: - C-10, C-Block Market, Vasant Vihar,
New Delhi- 110057.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Garv Malhotra (Advocate)

Rajat Gupta (Advocate)

**Complainants
Respondent**

ORDER

1. This 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 allottees 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	"Primera", Sector 37D, Village Gadauli Kalan, Gurugram
2.	Project area	13.156 acres
3.	Registered area	3.257 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	12 of 2009 dated 21.05.2009 valid upto 20.05.2024
6.	Name of licensee	Ramprastha realtor Pvt. Ltd.
7.	Date of approval of building plans	25.04.2013
8.	RERA Registered/ not registered	Registered vide no. 21 of 2018 dated 23.10.2018
9.	RERA registration valid up to	31.03.2020
10.	Unit no.	1603, 16 th floor, tower/block-D (Page no. 27 of the complaint)
11.	Unit area admeasuring	1720 sq. ft. (Page no. 27 of the complaint)
13.	Date of execution of apartment agreement buyer	23.05.2014
14.	Possession clause as per BBA	15. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by



		<p>RAMPRASTHA. RAMPRASTHA shall endeavour to complete the construction of the said Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP. The Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</p> <p>(Emphasis supplied)</p> <p>(Page no. 37 of the complaint)</p>
15.	Due date of possession	<p>25.02.2018</p> <p>[The due date of possession is calculated as 54 months from approval of building plans i.e., 25.04.2013 + Grace period of 4 months is allowed to the respondent in view of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in <i>Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari</i>]</p>
16.	Grace period	Allowed
17.	Total sale consideration	<p>Rs.1,01,28,226/-</p> <p>(As per BBA at page 27 of complaint)</p>
18.	Amount paid by the complainants	<p>Rs.67,39,995/-</p> <p>(As per page 65 of complaint)</p>
19.	Occupation certificate /Completion certificate	05.04.2023
20.	Offer of possession	<p>06.04.2023</p> <p>(page 71 of complaint)</p>
21.	Final reminder	<p>16.08.2023, 28.08.2023</p> <p>(page 68-69 of complaint)</p>
22.	Pre-cancellation notice	<p>24.08.2023</p> <p>(page 70 of complaint)</p>



B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants paid an amount of Rs.5,00,000/- and an amount of Rs.7,00,000/- in favor of the respondent to book a residential apartment in the respondent's project namely "Primera", situated in Sector-37 D, Gurugram and the same was duly acknowledged by the respondent vide its receipts dated 18.11.2013 issued in favor of the complainant.
- II. That the complainants and the respondent entered into a builder's buyer agreement on 23.05.2014, wherein the complainants were allotted a residential flat/unit bearing no. 1603, located on the 16th Floor, situated in the Tower/Block No. D, having super area of 1720 sq. fts. (approximately).
- III. That as per clause 15 (a) of BBA, committed the time of handing over the possession is a period of 54 months from the date of approval of building plans by the office of DGTCP. That as per the said clause it was agreed that the allottee agrees and understands that the developer shall be entitled to a grace period of 120 days for applying and obtaining the occupation certificate in respect of the group housing complex.
- IV. That the complainants and the respondents entered into a Tri-Partite Agreement along with the Housing Development Finance Corporation Limited (HDFC) situated in Sector-37D, Gurgaon on 26.05.2014 wherein the complainants approached the HDFC to advance a loan of Rs.75,72,800/- to purchase the said flat, which shall be repaid by the complainants through equated monthly instalments to the lender bank.



- V. That till date the complainants have paid an amount of Rs.67,39,995/- which is duly acknowledged by the respondent vide their own account statement dated 07.11.2023.
- VI. That the respondent has issued an illegal, arbitrary and malafide pre-cancellation letter dated 24.08.2023, wherein the respondent has given the complainants a final opportunity to pay the balance amount of the said unit. It is submitted that the respondents have charged illegal, arbitrary interest upon the delayed payments by the complainant. That the respondents are charging Rs.2,36,000/- from the complainant on account of club charges, that till date the club in the respondent's project is not functional and charging the complainant on account of club charges is illegal, arbitrary and malafide and thus the same are to be waived off.
- VII. That the complainants are still ready to take the possession of the said unit after making the payments that are due to the respondents, in the case the respondent decides to handover the valid possession of the said unit.
- VIII. That the complainants in order to positively obtain the possession of the unit after conciliation of the accounts approached the respondent on multiple occasions. That it is submitted, to an utter shock of the complainants, the respondent has blatantly refused to adjust the delayed possession interest that is the right of the allottee, as the said project has been delayed for more than 7 years, and the respondent has been raising illegal and malafide demands from the complainants during this period for payment of the due amount. That the respondents are charging the complainants with illegal and arbitrary charges such as club charges, holding charges etc. which are liable to be waived off by the respondent.



- IX. That the complainants have complied with all the terms and conditions of the various documents executed but the respondent has failed to meet up with its part of the contractual obligations and thus is liable for DPC and interest for every month of delay at prevailing rate of interest from the due date of possession till valid offer of possession and physical possession. But, till date no amount has been paid back to the complainants and the respondent is enjoying the hard-earned money of the complainants for past more than five years approximately.
- X. That the complainants had approached the respondent time and again seeking the information and status of the project and date of offer of possession of the said premises. After repeated reminders, the respondent assured that it will handover of possession soon. Yet no such offer has been made till now. Moreover, in the present project the respondent has charged the complainant on super built up area whereas as per the Act, the basic sale price is liable to be paid on the carpet area only. This is a clear and blatant violation of the provisions, rules and object of the Act.
- XI. That the complainants have suffered great losses in terms of loss of rental income, opportunity to own and enjoy a property in Gurugram, as majority of their life's hard-earned money is stuck in this project. The respondent is liable to compensate the complainants for its above acts and deeds causing loss of time, opportunity, and resources of the complainants due to the malpractices of the respondent. Thus, the complainants are also reserving their rights to be adequately compensated by the Adjudicating Officer.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):



- i. Direct the respondent to pay delay possession charges at prescribed rate.
 - ii. To order the respondent to waive off club charges and holding charges.
 - iii. Direct the respondent to charge on the carpet area and to provide detailed break-up of super area and common area applicable and allotted to complainants and whether it includes the area designated under two paid car parking or not.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
- i. That the mal-intentions of the complainants have emerged to light with the present time-barred complaint. That assuming without admitting, even if the payment towards booking amount has been rendered by the complainant in 2014, the present claim for possession along with penalties which is in the nature of recovery of money is clearly barred by limitation in terms of the provisions of the Limitation Act.
 - ii. That the respondent has already received occupation certificate dated 05.04.2023 with respect to its project "Primera" and has offered possession to majority of allottees pertaining to such project. That it is complainant who have not come forward to take the possession and clear the pending due.
 - iii. That the complainant and the respondent along with the HDFC have executed a tripartite agreement dated 26.05.2014 with regards to obtainment of financial assistance for purchase of the present unit in the project of the respondent. Therefore, by virtue of the tripartite



agreement dated 26.05.2014, the HDFC is a necessary party to the present complaint.

- iv. That the respondent itself has suffered a lot on account of delay in construction which was not in any manner induced by the respondent but has occasioned only due to several reasons beyond the control of the respondent.
 - v. That the offer of possession was made by the respondent vide its email dated 06.04.2023. However, the complainant did not come forward to take the possession of the said unit, instead filed this complaint based on misleading, false and frivolous averments. Furthermore, it is submitted that charges levied upon the complainant are as per the builder buyer agreement executed between the parties.
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 parties.

E. Jurisdiction of the authority

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

8. 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

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) 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.

F. Findings on the relief sought by the complainants

F.I Direct the respondent to pay delay possession charges at prescribed rate.

11. In the present complaint, the complainants intend to continue with the project and are 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.""

(Emphasis supplied)



12. As per clause 15(a) of the apartment buyer's agreement provides for handing over of possession and is reproduced below:

"15. POSSESSION

(a). Time of handing over the Possession

"Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall endeavour to complete the construction of the said Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP. The Allottee agrees and understands that the Developer shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

13. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 54 months from the date of approval of building plans i.e., 25.04.2013 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under: -

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and



if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

14. In view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, including a grace period of 120 days, the due date of handing over of possession comes out to be 25.02.2018.
15. **Admissibility of delay possession charges at 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. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. 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.

17. 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., 30.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made by both the parties, 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 per the agreement. By virtue of clause 15(a) of the apartment buyer's agreement executed between the parties on 23.05.2014, the possession of the subject apartment was to be delivered within a period of 54 months from the date of approval of



building plans i.e., 25.04.2013 which comes out to be 25.10.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.02.2018. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 23.05.2014 executed between the parties. Occupation certificate was granted by the concerned authority on 05.04.2023 and thereafter, the possession of the subject unit was offered to the complainants vide email dated 06.04.2023. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 23.05.2014 to hand over the possession within the stipulated period.

21. 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 05.04.2023. The respondent offered the possession of the unit in question to the complainants only on 06.04.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of



possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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 till the expiry of 2 months from the date of offer of possession (06.04.2023) which comes out to be 06.06.2023.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @11.10% p.a. w.e.f. 25.02.2018 till the expiry of 2 months from the date of offer of possession (06.04.2023) which comes out to be 06.06.2023 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.

F. II To order the respondent to waive off club charges and holding charges.

23. **Club Charges:** This issue has already been dealt by the Authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.** wherein it is held that, if the club has come into existence and the same is operational or is likely to become operational soon i.e. within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the builder buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the



club and demand money regarding club charges and its membership from the allottees only after completion of the club.

24. **Holding Charges:** The respondent is directed not to charge any amount against holding charges from the complainants at any point of time even after being part of the buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*

F. II Direct the respondent to charge on the carpet area and to provide detailed break-up of super area and common area applicable and allotted to complainants and whether it includes the area designated under two paid car parking or not.

25. The Authority observes that the project in question is an ongoing project, and the provisions of the Act are applicable to it. The allottees have a right to know as to how much the carpet area of the unit is and how much loading has been done on it along with components of super area as per the builder buyer's agreement. Although, the agreements entered into prior to coming into force of the Act are treated as sacrosanct and the promoter is well within his right to charge on the basis of the super area but under this garb, allottees cannot be allowed to be cheated and they are to be informed as what is being charged from them in the name of super area. Accordingly, the respondent promoter is directed to make available the details of the super area.

G. Directions of the authority

26. 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 pay interest to the complainants against the paid-up amount of Rs.67,39,995/- at the prescribed



rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 25.02.2018 till expiry of 2 months from the date of offer of possession (06.04.2023) i.e., upto 06.06.2023 only as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.

- ii. The respondent is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainants.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
 - iv. The respondent/promoter shall handover possession of the flat/unit to the complainants in terms of Section 17(1) of the Act of 2016.
 - v. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement.
 - vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
27. Complaint stands disposed of.
28. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.07.2025