

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

Complaint no. : 4066 of 2023  
Date of filing : 05.09.2023  
Date of decision: 22.04.2025

Mr. Nishant Mehra  
R/o: - H.No. 002, Type 4A, Lok Sabha Sceretariat  
Residential Complex, Sector-2, R.K Puram, Delhi

**Complainant**

Versus

M/s Ramprashtha Promoters and Developers Private  
Limited.  
**Regd. 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:**

Sh. Geetansh Nagpal (Advocate)  
Sh. Navneet Kumar (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 05.09.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"The Edge Tower", Sector 37D, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	108894 sq. mt.
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others
7.	RERA Registered/ not registered	Registered vide no. 279 of 2017 dated 09.10.2017
8.	Unit no.	C-1004, 10 <sup>th</sup> floor, tower/block- C (Page no. 35 of the complaint)
9.	Unit area admeasuring	1990 sq. ft. (Page no. 35 of the complaint)



10.	Allotment letter	19.04.2012 (Page no. 24 of the complaint)
11.	Date of execution of apartment buyer agreement	19.04.2012 (Page no. 29 of the complaint)
12.	Possession clause	<p><b>15. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p>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 RAMPRASTHA. RAMPRASTHA proposed to hand over <i>the possession of the Apartment by 31/08/2012 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.</i></p> <p>(Emphasis supplied)</p>



		(Page no. 58 of the complaint)
13.	Due date of possession	31.12.2012 (Including 120 days grace period) [As per mentioned in the buyer's agreement]
14.	Total sale consideration	Rs.52,94,650/- (As per schedule of payment page 64 of the complaint)
15.	Amount paid by the complainant	Rs.47,05,178/-
16.	Occupation certificate /Completion certificate	Not received
17.	Offer of possession	Not offered

## B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in year 2008, the respondent issued an advertisement announcing a group housing project called 'THE EDGE TOWER' in at Sector 37D, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of units in the said project.
- II. The complainant vide an application form dated 26.08.2008, booked a unit in the Group Housing Project of the respondents called "The Edge Towers" at Sector37D, Village Gadauli Kalan, Gurugram. The complainant made a payment of Rs. 4,27,850/- towards the booking amount.

- III. The respondents, upon such confirmation of the booking application, allotted the residential apartment bearing no. C-1004 to the complainant admeasuring 1990 sq. ft in the said project.
- IV. That a buyer's agreement was executed between the complainant and the respondent on 19.04.2012 for a total consideration of Rs. 52,94,650/- as per the payment plan annexed at Annexure-II of the buyer agreement.
- V. As per clause 15(a) of the buyer's agreement the Respondent had to deliver the possession of the unit by 31.08.2012, which the respondent did not do so till date.
- VI. The complainant till the year 2016, paid a total amount of Rs. 47,05,178/- out of the total sale consideration of Rs. 52,95,650/- as per the statement of account dated 09.03.2022 and out of total sale consideration of Rs. 52,95,650/- as promised by the respondent as per the payment plan at Annexure-II of the buyer agreement.
- VII. The complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the delay compensation. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to how the delay in the project will be compensated, but to no avail.
- VIII. That the respondents have played a fraud upon the complainant and have cheated him fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The

respondent had further malafidely failed to implement the builder buyer agreement. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the Respondent is filing the present complaint.

- IX. It is also pertinent to mention here that the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15% as per clause 14 whereas under clause 17, the compensation for delay stipulated for the buyers is merely Rs. 5/- per sq. ft.
- X. That the complainants had filed a complaint before the Real Estate Regulatory Authority, Gurugram bearing complaint no. RERA-GRG-3469/2022 for refund of the total amount paid along with interest but due to such circumstances, the complainant do not wish to take back the refund of the total amount paid along with interest and hence, want possession of the unit in question and delay possession charges furthermore for the same. The said complaint for refund was disposed of on 22.02.2023 and hence no further execution was filed for executing the said order.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- I. Direct the respondent to handover the actual physical possession of the unit without asking for any demands which are not part of builder buyer agreement.
  - II. Direct the respondent to pay the delay possession charges on the total amount paid by the complainant at the prescribed rate of interest as per



RERA from due date of possession i.e., 31.08.2012 till the date of actual handing over of possession.

- III. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016.
- IV. Direct the Respondent not to create any third party rights, title and interest in the aforementioned unit in the project of the respondent.
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 delay in delivering the possession of the apartment to the complainant herein has been attributed solely to reasons beyond the control of the respondent.
  - ii. That the clause 15 (a) of the agreement shall not be read in isolation but have to be read in light of other clauses of the agreement. Clause 15(a) of the agreement is subject to clause 31 of the agreement. Clause 15(a) stipulates the time for handing over of the possession which is subject to force majeure circumstances which clearly indicate the nature of the agreement entered into between the parties, whereby, the stipulated date of delivery is not a strict and final date but merely a tentative date which is further subject to several factors involved.

- iii. That the respondent faced extreme water shortage, which was completely unforeseen by any of the Real Estate Companies, including the Respondent herein, in the NCR region. The respondent, who was already trying hard to cope up with the shortage of labour, as mentioned above, was now also faced with the acute shortage of water in the NCR region. The said factor of shortage of water directly affected the construction of the project at the site. To make the conditions worse, the Hon'ble High Court of Punjab and Haryana vide order dated 16.07.2012 restrained the usage of groundwater and directed to use only treated water from available Sewerage Treatment Plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing construction activities in Gurugram District, it became difficult to timely complete the construction activities as per the schedule. The availability of treated water to be used at construction sites was very limited and against the total requirement of water, only 10-15% of the required quantity was available at construction sites. In furtherance to the directions of the Hon'ble High Court of Punjab and Haryana, the respondent received a letter bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana, informing the respondent about the complete ban on the use of underground water for construction purposes and use of only recycled water being permitted for the said purposes.



- iv. That the complainant herein is not entitled to claim delay penalty charges as claimed by the complainant in the complaint is clearly time barred. The complainant has itself not come forward to execute the buyers agreement and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainant alongwith several other reasons beyond the control of the respondent as cited by the respondent which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainant herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine Allottees at stake. If at all, the complainant had any doubts about the project, it is only reasonable to express so at a much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainant is made crystal clear with the present complaint and concretes the status of the complainant as investors who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.
- v. It is evident from the complaint that the complainant were actually waiting for the passage of several years to pounce upon the respondent and drag the respondent in unnecessary legal proceedings. It is submitted

that huge costs must be levied on the complainant for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent. It is pertinent to mention here that from the date of booking till the filing of the present complaint, the complainant have never ever raised any issue whatsoever and have now concocted a false story and raised false and frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainant clearly indicates that the complainant are mere speculators having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainant have filed the present complaint on false, frivolous and concocted grounds.

- vi. That no cause of action has ever accrued in favour of the complainant to file the present complaint before the Ld. Authority. The complaint being without any cause of action is liable to be dismissed on this ground alone.
- vii. That the complainant persuaded the respondent to allot the said apartment in question to them with a promise to execute all documents as per the format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainant prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainants.
- viii. 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 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Findings on the relief sought by the complainants**

**G. I Direct the respondent to handover the actual physical possession of the unit without asking for any demands which are not part of builder buyer agreement.**

**II. Direct the respondent to pay the delay possession charges on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession i.e., 31.08.2012 till the date of actual handing over of possession.**

**III. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016. Direct the Respondent not to create any third party rights, title and interest in the aforementioned unit in the project of the respondent.**

11. The above mentioned reliefs no. G.I, G.II & G.III as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

12. It is important to note that the complainant had previously filed CR No. 3469/2022, which was disposed of on 22.02.2023. In that matter, the complainant was granted a refund due to the non-delivery of the unit within the agreed timeline. The complainant has now filed the present complaint,

seeking both delayed possession and physical possession of the unit in question.

13. After consideration of all the facts and circumstance, Authority is of view that the present complaint seeking delay possession charges is not maintainable in light of the fact that the complainant had already exercised the remedy of refund under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") which was granted on 22.02.2023. Section 18(1)(a) of the RERA Act provides that where the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale, the allottee shall have the option to either withdraw from the project and claim refund of the amount paid along with interest and compensation, or to continue in the project and claim interest for the period of delay, the same is reproduced below for ready reference:

***"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.-*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*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)*

14. These two remedies refund with interest and interest for delayed possession upon continuation are mutually exclusive in nature. Once the complainant has availed the remedy of refund and thereby withdrawn from the project, the complainant ceases to be an allottee in respect of the said unit and cannot thereafter seek remedies available to allottees who choose to remain in the project, including compensation for delay in possession. Allowing an allottee to claim delay possession charge after already getting a refund would be unfair.
15. Further, this Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and finally decided by this Authority in the former complaint bearing CR.No. 3469-2022. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

*"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*



**Explanation I.**—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

**Explanation II.**—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

**Explanation III.**—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

**Explanation IV.**—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

**Explanation V.**—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

**Explanation VI.**—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

**1[Explanation VII.**—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

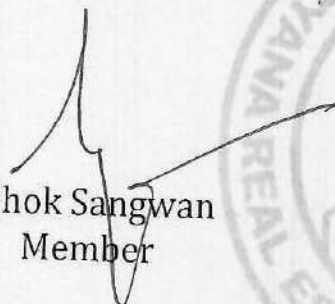
**Explanation VIII.** —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

16. The authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the


principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.

17. Complaint stands disposed of.

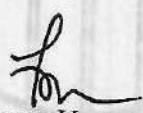
18. File be consigned to registry.



Ashok Sangwan  
Member



Vijay Kumar Goyal  
Member



Arun Kumar  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2025