

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

Complaint no.: 257 of 2024
Date of filing: 24.01.2024
Date of order: 01.05.2025

Rashmi Anand Kumar & Sons HUF through
Karta Mr. Anand Kumar

R/o: - 57/1101, Seawoods Estate, NRI
Complex, Plam Beach Road, Sector-54,56 and
58, Nerul (West), Navi Mumbai-400706

Complainant

Versus

1. M/s Ramprastha Estates Private Limited
Regd. office at: - C-10, C-Block Market, Vasant
Vihar New Delhi-110057.

2. M/s Ramprastha Promoters & Developers Pvt.
Ltd

Corporate Office:

114, Sec-44, Gurgaon, Haryana-122002

Registered Office:

C-10, C-Block Market, Vasant Vihar New Delhi-
110057

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Rishabh Jain (Advocate)

Shri R. Gayatri Mansa (Advocate)

Complainant
Respondent

ORDER

1. This 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)

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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 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.No. | Particulars | Details |
|-------|---|---|
| 1. | Project name and location | "Ramprastha City" Sector-37C and 37D, Gurugram." |
| 2. | Project area | 105.402 acres |
| 3. | Nature of the project | Residential colony |
| 4. | Plot no. | B-211 (As per page no. 46 of the complaint) |
| 5. | Unit admeasuring | 300 sq. yds. (As per page no. 46 of the complaint) |
| 6. | Date of booking | 20.07.2006 (As per page no. 30 of the complaint) |
| 7. | Date of Allotment letter | 04.04.2014 (As per page no. 29 of the complaint) |
| 8. | Date of execution of plot buyer's agreement | 20.03.2015 (As per page no. 45 of the complaint) |
| 9. | Possession clause | 11. SCHEDULE FOR POSSESSION <i>The company shall endeavour to offer possession of the said plot, within thirty (30) months with another grace period of six (6) 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.</i> (As per page no. 50 of the complaint) |
| 10. | Due date of possession | 20.03.2018 (Note: Due date to be calculated 36 |



| | | |
|-----|--------------------------------------|---|
| | | months from the date of execution of BBA i.e., 20.03.2015 including grace period of 6 months) |
| 11. | Total consideration | Rs.37,80,000/- (As per payment plan on page no. 59 of the complaint) |
| 12. | Total amount paid by the complainant | Rs.31,20,000/- (As per receipt information on page no. 30 & 35-39 of the complaint) |
| 13. | Occupation Certificate | Not obtained |
| 14. | Offer of possession | Not offered |

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a unit in the project by paying a booking amount towards the booking of the said unit/plot bearing no. B-211, in Sector 37-C & D, Gurugram having super area admeasuring 300 sq. yards to the respondents on 20.07.2006 and the same was acknowledged by the respondents.
- II. That the total sale consideration of the unit was Rs.37,80,000/- which includes basic price, Car parking charges, and Development Charges, PLC, IFMS, IBRF, Club Membership Charges and other specifications of the allotted unit and providing the time frame within which the next instalments were to be paid. Thereafter, respondents sent welcome and allotment letter dated 04.04.2014 to complainant providing the details of the said plot.
- III. That a buyer's agreement was executed between the parties on 20.03.2015. As per clause 11 of the said agreement the respondents had to deliver the possession of the unit by 30 months from date of agreement plus six months of grace period for applying and obtaining the occupation certificate. Therefore, due date of possession comes out to be 20.9.2017.



As per the latest orders of the Authority, respondents are not entitled for the grace period. Therefore, in calculating the due date of possession, grace period is not included.

- IV. That at the time of execution of the agreement the complainant had objected towards the highly titled and one-sided clauses of the agreement, however, the respondents curtly informed that the terms and conditions in the agreement are standard clauses and thus, no change can be made.
- V. Furthermore, since the respondents was in dominant position, they fabricated the agreement according to their whims and fancies. As per the demands raised by the respondents, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.31,20,000/-towards the said unit against total sale consideration of Rs. 37,80,000/-.
- VI. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondents and asked about the status of construction and also raised objections towards non-completion of the project.
- VII. That the respondents were never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondents by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail.
- VIII. That the respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BA and the different advertisements released from time to time.

Further, such acts of the respondents are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

- IX. That the respondents is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondents and as such the respondents is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- X. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their unit and the provisions allied to it.
- XI. That the Hon'ble NCDRC and Hon'ble supreme Court of India have been indulgent enough to protect the similarly placed complainant against such builders and have granted almost similar reliefs as are prayed for herein under. Such clauses of BBA are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as *Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)* as also in the judgement of Hon'ble Supreme Court in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*.
- XII. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Authority

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C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondents to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondents in spite of the fact that the complainant desires to take the possession.
- ii. Direct the respondents to pay the balance amount due to the complainant from the respondents account of the interest, as per the guidelines laid in the RERA 2016, before signing the conveyance Deed/ sale deed.
- iii. Direct the respondents not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
- iv. Direct the respondents to provide the committed date of completion of the unit. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to kindly handover the possession of the unit after completing in all aspect to the Complainant and not to force to deliver an incomplete unit.
- v. Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of ABA.
- vi. Direct the respondents to provide the exact lay out plan of the said unit.
- vii. Direct the respondents to get the conveyance deed executed deed.
- viii. Direct the respondents not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.
- ix. Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the HVAT, which in any case is not payable by the Complainant.
- x. Restrain the respondents from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.

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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 contested the complaint on the following grounds: -

- I. That the complainant has stated incorrect facts before this Authority and has also suppressed important facts which are necessary for the just disposal of the instant case.
- II. That on examination of the zoning plans which were issued by the Government in early 2014, it became clear that there were various aspects which required further correction in the zoning plans of the Government and which will have a direct effect on the layout of a residential plotted colony. The various factors as evidenced in Letter dated 07-04-2014 are mentioned herein below.
 - a. That there is a HSIIDC Nala which is passing through the land adjoining to the HUDA Nala in the village Gaduli Kalan.
 - b. That the boundary lines of village Basai and Gadauli Kalan is wrong and not as per the sizra plans.
 - c. The position of khasra Nos. were not correct.
 - d. That a new HT Line passing through the colony has been installed by Dakshin Haryana Bijli Vitaran Nigam which will have an effect on various plots of land and also a separate green corridor was required to be created on both sides of the HT line.
- III. That revision in zoning plans of any development area is a cumbersome process undertaken by the State authorities and the respondent has no control over the process. The respondent was obliged to point out the various discrepancies and corrections that were required in the Zonal Plans and which will have a further effect on the layout of the residential plotted colony. By September 2014, it was clear that fresh zoning is required to be undertaken and this will take considerable time. This was specifically informed to all the allottees.

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IV. That the list of time-consuming discrepancies are as under.

a) Incorrect Depiction of Village Boundary lines:

- i) The boundary of village Gadauli Kalan and Basai is shown incorrectly in the Sectoral plan as compared to the actual physical position over the site. The Sectoral plan depicts the boundary as straight whereas the actual physical position is altogether different.
- ii) Adequate emphasis was not given to the fact the village boundary of Gadaulikalan and Basai is majorly affecting village Gadauli Kalan with substantial boundary deviation of approx. 15 - 20 meters.
- iii) It was required to consider that said deviation of 15 - 20 meters is running all along to boundary of villages Gadauli Kalan and Basai starting from Railway lines, which is not minor deviation but on the other hand majorly affects/disturbs the area bearing the plotted project.
- iv) The said deviation of 15 - 20 meters has adversely affected the alignment of internal sector road of 24 meters, thereby causing deviation to the extent of 20 - 30 meters in internal sector road of 24 meters.

b) HSIIDC NALA

- i) Adverse impact over development of EWS plots: Because the fact requires attention that the HSIIDC Nala was not shown in government approved Sectoral Plan. Due to said flaw, the opposite party unable to finalize the development of nearby area of said Nala which includes the plots for Economic Weaker Section (EWS Plots). The EWS Plots cannot be reduced as per the settled proposition of law/the EWS policy.

c) Deviation In the Road

- i) **Non-Development of Community Center:** Because of the deviation in the road, the community center located near HSIIDC Nala has also been affected. The non-development of the community center in the planned manner will cause grave loss to the applicant while developing the project. The area

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allotted for the community center cannot be reduced, in alternative it can be relocated but which will again lead to revision of layout plan.

ii) **Adverse impact on Development of Schools forming part of township:**

Because of the deviation in the boundary, the High School and Primary School sites are also adversely affected. The project is being developed by the Applicant in a holistic manner; therefore, the sites where High School and Primary School are located should not be affected. It is further submitted that are allotted for the schools in the said project cannot be reduced, in alternative it can be relocated but which will again lead to revision of the layout plan.

iii) **Adverse Impact on other basic amenities of townships Nursing Home and other sites of similar importance:**

Because of the finds, the Nursing home site is also being affected. All the sites which are being developed by the applicant in the project are of great importance for the basis amenities necessary for the livelihood of the general public, therefore the same should not be affected. The area allotted for the Nursing Home and other important amenities in the said project cannot be reduced, in alternative it can be relocated nut which will again lead to revision of the layout plan.

d) HT Lines

i) Because at the time of application by the respondent for layout plan approval, there were no **HT Lines** passing through the colony, but later on, DHBVNL installed **HT Lines** passing through several plots demarcated as per approved layout plan. Therefore, for **HT Lines**, separate Green corridor of 18M needs to be created on land over which **HT Lines** is installed. Due to such flaw, the licensed area to the extent of approx. 7-8 acres is getting affected.

e) QUANTUM OF IMPACT OVER THE DEVELOPED PLOT/S

i) Because the facts require attention that a total number of 144 Plots are getting affected directly. Approx. 60-70% of the Plots of the project developed by the respondent was adversely affected because any small change in the layout plan will impact whole project because one demarcated change will

lead to another change in the layout plan. The impact of one change in the plot will have an impact on subsequent plot/ road/ amenities as demarcated in the layout plan by the applicant.

- V. That the reasons for delay in obtaining the approvals, are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainant had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and hence outside the purview of RERA Authority. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this Authority and hence the complaint is liable to be dismissed on this ground as well.
- VI. That when the complainant had approached the respondent, it was unequivocally clear to the complainant that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land owned by the respondent unless zoning plans are approved and RERA Registration is obtained and further, the respondent never offered to handover any specific plot within any fixed time period; and it is also pertinent herein to mention that specific plot with preferred location can be demarcated only when the government releases the zoning plans applicable to the area Village Basai, Gadauli Kalan, Gurugram.
- VII. That the complainant is not an allottee and hence the proceedings are merely in the nature of recovery which is not maintainable before this forum. That even if it is assumed that such a claim in the nature of money is maintainable, the claim is hopelessly barred by limitation filed after the expiry of 3 years from the date of payment.
- VIII. That the objective of the 2016, Act is not only to safeguard the interests of the allottees but also, to ensure the healthy promotion of real estate sector

and to protect the interests of the several stake holders involved in such sector.

- IX. That, the Hon'ble Regulatory Authority carries a duty towards the Real Estate Sector apart from safeguarding the interests of the allottees. That in this aspect, several High Courts in India and the Hon'ble Supreme Court have established and affirmed the above through line of judgments.
- X. Therefore, among the diverse objectives of RERA, the most pivotal object of RERA is to see that the real estate projects come to fruition within the stated period and to see that such allottees are not left in the lurch and are finally able to realise their dream of a home, or be paid compensation if such dream is shattered, or at-least get monies back that they had advanced towards the project with interest. At the same time, recalcitrant allottees are not to be tolerated, as they must also perform their part of the bargain, namely, to pay instalments, as and when they became due and payable.
- XI. That the Hon'ble Apex Court in several matters has empathized with the Builders and other people alike in the real estate sector who are indeed exposed to several adversities in completion of a project.
- XII. That the Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Limited & Ors. Vs Union of India & Ors., Civil Appeal 43 of 2019*** has observed that,

"The object of RERA is to see that real estate projects come to fruition within the stated period and to see that allottees of such projects are not left in the lurch and are finally able to realize their dream of a home, or be paid compensation if such dream is shattered, or at least get back their monies back that they had advanced towards the project with interest. At the same time, recalcitrant allottees are not to be tolerated, as they must also perform their part of the bargain, namely, to pay instalments as and when they become due and payable."

[Emphasis Added]

- XIII. That in ***Neelkamal Realtors Suburban Pvt Ltd & Ors Vs Union of India & Ors., Writ Petition No. 2737 of 2017***, when vires of several provisions of

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the RERA Act, 2016 have come in challenge before the Hon'ble Supreme Court, the Hon'ble Court has observed as hereinbelow;

"13..... In the view of the Learned Counsel, the RERA aims at promoting and protecting interest of the allottees alone, while the promoters rights are totally given a go-bye which not only would cause tremendous financial loss and damage, but would seriously jeopardize and hamper the real estate market in respect of the ongoing project and even the new projects. "

"109. In case the promoter established and the authority is convinced that there were compelling circumstances and reasons for the promotor in falling to complete the project during the stipulated time, the authority shall have to examine as to whether there were exceptional circumstances due to which the promotor failed to complete the project. Such as assessment has to be done by the authority on case to case basis and exercise its discretion to advance the purpose and object of RERA by balancing rights of both, the promotor and the allottee. In such exceptional cases, the authority would be entitled to allow the same promoter to continue with the subject project for getting the remaining development work complete as per the directions issued by the authority."

And that,

"115.Even if under Second proviso to Section 8, the association of allottees may deserve first consideration, but under the wide powers conferred under Section 7(3), 8 and 37 of the RERA, the authority could mould its directions in such a way so that the object and purpose of the Act, i.e., to complete the development work within the stipulated time frame is achieved. If the authority does not find any deliberate lapses on the part of the promoters and in case the authority is convinced that there are exceptional circumstances compelling in nature which prevented the development work, then it shall be necessary for the authority to continue the same promoter under its directions. The authority dealing with such contingencies, if any, would deal with the relevant issues after hearing allottees/associations of allottees and other stakeholders, if any. "

Further that,

"126. That another plea raised it as to why a promoter shall pay interest for the past contractual rights, in case of failure to complete the project after registration under RERA, till the possession is handed over. Under the scheme of the RERA, it is clear by now that a promoter has to self-assess and declare time period during which he would complete the project. But in case, inspite of making genuine efforts, a promoter fails to complete the project, then the concerned authorities, adjudicators, forums, tribunals would certainly look into genuine cases and mould their reliefs accordingly.... "

That,

"152. It needs to be emphasized that RERA law is not to be considered as anti-promoter. It is a law for regulation and development of the real estate sector. Under the scheme of the RERA, the promoter's interests are to be safeguarded and there is a reason for the same. Unless a professional promoter making genuine



efforts is not protected, then very purpose of development of real estate sector would be defeated.. "

"256. Section 4(2)(1)(C) enables the promoter to revise the date of completion of the project and handover possession.. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(1)(c) he is not absolved of the liability under the agreement for sale."

[Emphasis Added]

XIV. Therefore, in the abovesaid premises and surmises the present complaint is not maintainable in its present form and ought to be dismissed with exemplary costs upon the complainant.

7. All other averments made in the complainant were denied in toto.
8. 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.

E. Jurisdiction of the Authority.

9. The authority has complete territorial and 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 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:

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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)(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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.1 Objection raised by the respondent regarding the complaint being non-maintainable on ground of being barred by limitation.

13. The respondent contends that the complaint is not maintainable as it is barred by limitation, citing that the complaint is filed after the expiry of 3 years from the date of payment. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to the Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as *M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others* which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the

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ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

14. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

F.II Objections regarding the circumstances being 'force majeure'.

15. The respondent further contends that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals/completion certificate, passing of HT lines over the project, passing of HSIIDC nala etc. non-availability of necessary infrastructure facilities like road connectivity, laying down of water, electricity lines etc. to be provided by the government for carrying out development activities which were beyond the control of respondent. However, no document in support of its claim has been placed on record by the respondent. Hence, all the pleas advanced in this regard are devoid of merits. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Therefore, the respondent cannot take benefit of its own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondents to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is

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being denied to the complainant by the respondents in spite of the fact that the complainant desires to take the possession.

G.II Direct the respondents to pay the balance amount due to the complainant from the Respondents account of the interest, as per the guidelines laid in the RERA 2016, before signing the Conveyance Deed/ sale deed.

16. That the complainant was allotted a plot no. B-211 in the respondent's project "Ramprastha City," Sector 37C and 37D, Gurugram, vide allotment letter dated 04.04.2014 issued by respondent no. 2. Subsequently, a builder buyer agreement for the subject unit was executed between the complainant and respondent no. 2 on 20.03.2015 for a total sale consideration of Rs.37,80,000/-.
17. During the proceedings dated 01.05.2025, the counsel for the complainant submitted that both respondent no. 1 and respondent no. 2 are parties to the agreement, and that the project is registered in the name of Ramprastha Estates, i.e., respondent no. 2 and both respondents are jointly and severally liable. Upon perusal of the documents placed on record, the Authority observes that the complainant has paid a total sum of Rs.31,20,000/-, which has been received by both the respondents. This is evident from the payment receipts dated 20.07.2006 issued by respondent no. 1 and receipts dated 17.04.2014, 29.08.2014, 10.11.2014, and 10.03.2015 issued by respondent no. 2 in favour of the complainant.
18. 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."



19. Clause 11(a) of the plot buyer's agreement provides for handing over of possession and is reproduced below:

11. Schedule for possession

The company shall endeavour to offer possession of the said plot, within thirty (30) months with another grace period of six (6) 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.

(Emphasis Supplied)

20. As per the abovementioned clause 11 of the plot buyer's agreement, due date of possession is to be calculated as 30 months plus grace period of six months from the date of execution of plot buyer's agreement. Therefore, the due date is calculated 36 months from the execution of plot buyer's agreement i.e., 20.03.2015 which comes out to be 20.03.2018.

21. 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.

22. 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.

23. 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., 01.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. 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;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. By virtue of clause 11 of the buyer's agreement executed between the parties on

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20.03.2015, the possession of the subject unit was to be delivered within 36 months from the date of execution of this agreement. Therefore, the due date of handing over possession comes out to be 20.03.2018. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondents/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 respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 20.03.2015 executed between the parties. Further no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

27. 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 respondents is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @11.10% p.a. w.e.f. 20.03.2018 till offer of possession plus two months or actual handing over of possession after obtaining completion certificate/part CC from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.III Direct the respondents not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

28. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. 4031 of 2019 titled as "*Varun Gupta V. Emaar MGF Land Ltd*".



G.IV Direct the respondents to provide the committed date of completion of the unit. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.

G.V Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of ABA.

29. In the present case, the due date of possession was 20.03.2018. However, even after a lapse of more than seven years the respondent has neither completed the project nor obtained completion certificate from the competent Authority.

30. As per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement dated 20.03.2015 executed between the parties after obtaining completion certificate/ part CC from the competent authority

G.VI Direct the respondents to provide the exact lay out plan of the said unit.

31. As per Section 19(1) of the Act, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide details i.e., actual area of the allotted unit in question to the complainant within a period of 30 days from the date of this order

G.VII Direct the respondents to get the conveyance deed executed deed.

32. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title :- (1).

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the

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physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case, may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws. Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

33. The authority observes that CC/ part CC with regard to unit in question has not been obtained by the respondent/promoter from the competent authority. The respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of three months after receiving completion certificate/ part CC from the competent authority.

G.VIII Direct the respondents not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.

G.IX Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the HVAT, which in any case is not payable by the Complainant.

G.X Restrain the respondents from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.

34. The respondent shall not charge the complainant any amount that is not included in the buyer's agreement. Further, relief with regard to not charge IFMS is concerned, the payment plan attached to the Builder Buyer Agreement (Annexure-I), the total sale consideration includes the charges for Interest Free Maintenance Security (IFMS) at the rate of Rs.600/- per square yard. Therefore, the complainant is liable to pay the IFMS charges as part of the agreed payment terms.

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H. Directions of the authority.

35. 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 respondents are directed to pay interest to the complainant against the paid-up amount i.e. Rs.32,15,000/- at the prescribed rate i.e. 11.10% p.a. for every month of delay from the due date of possession i.e., 15.08.2016 till offer of possession plus two months or actual handing over of possession after obtaining completion certificate/ part CC from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession till the date of order by the authority shall be paid by the promoters to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoters to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges. The respondents/promoter shall handover possession of the unit and execute conveyance deed 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, within three months after obtaining completion certificate / part CC from the competent authority.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by

the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 01.05.2025

v.l. 

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory
Authority, Gurugram