

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

Complaint no.: 4542 of 2023
Date of filing: 10.10.2023
Date of order: 22.05.2025

Balram

R/o.: House no.432, Village Kankrola, Gurugram

Complainant

Versus

M/s Ramprastha Developers Private Limited.

Regd. Office at: Plot no. 114, Sector- 44, Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Gaurav Yadav (Advocate)

Shri Kush Kakra (Advocate)

**Complainant
Respondent**

ORDER

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

A. Project and unit related details.

2. The particulars of the project, the details of 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.	Name of the project	N.A. (*Inadvertently mentioned as "Ramprastha City", Sector-92, 93 & 95, Gurugram. during proceedings dated 22.05.2025)
2.	Project area	N.A. (*Inadvertently mentioned as 123.5687 acres during proceedings dated 22.05.2025)
3.	DTCP license no. and validity status	N.A. (*Inadvertently mentioned as 44 of 2010 dated 09.06.2010 valid till 08.06.2016 acres during proceedings dated 22.05.2025)
4.	Unit no.	N.A.
5.	Area admeasuring	200 sq. yds. (as per payment receipts page no. 14 of the complaint)
6.	Date of execution of agreement to sell	Not executed
7.	Possession clause	N.A.
8.	Payment receipt	20.12.2010 (page 14 of complaint)
9.	Due date of possession	20.12.2013 (Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018 from the date of payment receipt i.e. 20.12.2010)
10.	Total sale consideration	N.A.
11.	Amount paid by the complainant	Rs.35,00,000/- (page no. 14 of the complaint)
12.	Occupation certificate /Completion certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint.

1. The complainant has made following submissions in the complaint:
 - i. That the respondent while advertising their projects portrayed themselves as a very ethical business group that live onto its commitments in delivering its project as per promised quality standards and on agreed time also.
 - ii. That somewhere, in the mid of the year 2010 the respondent through its business development associate approached the complainant with an offer to invest and buy a plot in the upcoming project of the respondent namely Ramprastha City, in the Sector-93,94,95, Gurugram. The respondent highlighted the amenities of the project and represented to the complainant that the respondent is very ethical business house in the field of residential and commercial project and assured the complainant that the respondent has purchased the land and has also processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of the said project therefore the completion date of the project would be honoured scrupulously.
 - iii. That lured by the assurance of the respondent and believing them to be true, complainant booked a plot measuring 200 sq. yds in their project and accordingly, the complainant paid an amount of Rs.35,00,000/- by cheque no. 000002 dated 15.12.2010 as an advance payment to the respondent.
 - iv. That after taking the advance amount from complainant respondent assured the complainant that their project will commence as soon as possible and the allotment of the plot will be made within two years to the complainant.

- v. That thereafter complainant waited for the allotment of the plot and repeatedly contacted the respondent through calls and meetings but no satisfactory response was ever provided by the respondent. It is pertinent to mention here that complainant also requested the respondent to execute any agreement or to provide anything in writing regarding the allotment of plot but instead of executing any agreement respondent threatened the complainant by saying that if you will ask for anything writing then all the advance payment will be forfeited and no allotment will be made.
- vi. That thereafter every time when complainant contacted the respondent for the allotment of the plot, the respondent lingered on the matter on one and other pretexts. That in the year 2014 respondent orally assured the complainant that the allotment of the plot will be made before 2018, thereafter complainant again waited for the allotment but the respondent again failed to adhere the deadline given to the complainant.
- vii. That thereafter complainant visited the office of respondent in the hope of getting any fruitful response but again respondent made lame excuses and demanded some more time and assured the complainant that allotment and possession of the unit will be made before 2020, respondent further assured the complainant that they will execute a builder buyer agreement as soon as possible. Complainant trapped in the web of false assurances and threatening of respondent, having no other options again waited for the allotment of the plot.
- viii. That in the initial months of year 2021 complainant repeatedly contacted the respondent for the allotment but respondent this time took the excuse of covid-outbreak in the country and assured the complainant that the project is near completion and allotment of the plot will be made soon but



that too was the delaying tactics of respondent as no allotment has been made till date.

- ix. That when the patience of the complainant was tested to heights, complainant himself decided to enquire about the reality of the project and he was shocked to learn that many people had been allotted plot by the respondent in their project. It is pertinent to mention that the complainant also asked several people whether any builder buyer agreement was ever executed between them and respondent, the reply given by everyone astounded the complainant as everyone stated that they entered into the builder buying agreement with respondent.
- x. That after discovering the aforementioned facts the complainant contacted the respondent to refund back the booking amount and cancel the booking of the complainant immediately due to an abnormally delay and false assurances but respondent denied to return the amount by saying that all your booking amount stands forfeited.
- xi. That the complainant several times requested the respondent to refund back the amount but it has not been considered/acknowledged by the respondent till now.
- xii. Those 13 long years has passed since the booking made by the complainant but till now neither the allotment has been made nor the amount has been refunded by the respondent. This act and conduct of the respondent caused mental agony and harassment to the complainant.
- xiii. That the respondent has played fraud upon the complainant and has robbed all his savings that were majorly invested with the respondent for the purpose of purchasing the said plot.

C. Relief sought by the complainant.

2. The complainant filed an application on 24.03.2025 seeking amendment in relief sought. The complainant thorough said application submitted that it is seeking relief of the refund of the paid-up amount i.e. Rs35,00,000/- along with interest.

D. Reply by the Respondent.

3. The complainant, through an application dated 24.03.2025, prayed for amendment in the title and memo of parties, submitting that the relief is being sought solely against M/s Ramprastha Developers Pvt. Ltd., and not against M/s Ramprastha Promoters and Developers Pvt. Ltd.
4. On the date of hearing of the said application, i.e., 22.05.2025, Shri Khush Kakra, counsel for M/s Ramprastha Developers Pvt. Ltd., appeared and submitted that M/s Ramprastha Developers Pvt. Ltd. had issued a payment receipt of Rs.35,00,000/- on 20.12.2010, no allotment letter had been issued, nor had any agreement been executed. He further submitted that the respondent i.e. M/s Ramprastha Developers Pvt. Ltd., is willing to refund the amount paid by complainant.
5. In view of the above, M/s Ramprastha Developers Pvt. Ltd. was impleaded as a respondent and M/s Ramprastha Promoters & Developers Pvt. Ltd. as well as M/s Ramprastha Estates Pvt. Ltd. were deleted from the array of parties.

E. Jurisdiction of the authority.

6. 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

7. 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

8. 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.

9. 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.

10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** and reiterated in case of

M/s Sana Realtors Private Limited & other Vs Union of India & others
SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to refund the entire paid-up amount along with interest.

12. On consideration of documents available on record and submissions made, the authority observes that the complainant has paid Rs.35,00,000/- to the respondent i.e. M/s Ramprastha Developers Pvt. Ltd, against which the M/s Ramprastha Developers Pvt. Ltd issued a payment receipt dated 20.12.2010

in favor of complainant allotting a 200 sq. yds. plot in its future project. However, no specific unit was allotted to the complainant and neither any allotment was issued nor buyers agreement was executed between parties as also submitted by counsel for the respondent during proceedings dated 22.05.2025.

13. The complainant herein is seeking return of the amount paid by him in respect of subject unit to be allotted along with interest. The respondent during proceedings dated 22.05.2025 submitted that it is willing to refund the paid-up amount. Therefore, the remaining relief sought by the complainant to be adjudicated is the entitlement to interest on the paid amount. As per Section 18(1)(b) of the Act, 2016, a promoter is liable to return the amount received from a allottee along with interest, in case the promoter fails to complete or give possession of the unit. The said section is reproduced below for 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. Admissibility of refund along with prescribed rate of interest: Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund the amount paid by the allottee in respect of the subject unit to be allotted with interest at prescribed rate as provided 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.

15. 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.

16. 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., 22.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

17. 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;"*

18. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the Authority.

19. 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/promoter i.e. M/s Ramprastha Developers Private Limited is directed to refund the amount received by it i.e. Rs.35,00,000/- from the complainant along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of payment made till the actual date of refund of the deposited amount.



HARERA
GURUGRAM


Complaint No. 4542 of 2023

II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

20. The complaints stand disposed of.

21. Files be consigned to registry.

Dated: 22.05.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM