

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

Complaint no.: 4265 of 2024  
Date of filing: 29.08.2024  
Order pronounced on: 21.03.2025

Anil Kumar Singhal (HUF) through its Karta Anil  
Kumar Singhal  
R/o: - KF-52, Kavi Nagar, Ghaziabad, UP-201002

**Complainant****Versus**

M/s Ramprastha Promoters & Developers Private Limited  
Regd. Office at: - 114, Sector 44, Gurugram,  
Haryana-122002

**Respondent****CORAM:**

Shri Ashok Sangwan

**Member****APPEARANCE:**

Shri Yogesh Kumar Goyal (Advocate)  
Shri Vishal Majumdar (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) 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 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.No.	Particulars	Details
1.	Name of the project	"Primera", Ramprastha City Sector 37-C and D, Gurugram
2.	Nature of the project	Group housing colony
3.	Area of the project	13.156 acres
4.	DTCP License no. and validity status	12 of 2009 dated 21.05.2009 valid upto 20.05.2024
5.	Name of licensee	Ramprastha Realtors Pvt. Ltd.
6.	RERA Registration	Registered vide no. 21 of 2018 dated 23.10.2018 for an area of 3.257 acres Valid upto 31.03.2020
7.	Unit no.	802 & Tower-A (As per page no. 53 of the complaint)
8.	Area admeasuring	1720 sq. ft.(Super Area) (As per page no. 29 of the complaint)
9.	Date of allotment letter	20.02.2014 [page 29 of the complaint]
10.	Date of BBA	Not executed
11.	Due date of possession	20.02.2017 [calculated from the date of allotment letter in absence of builder buyers agreement]
12.	Total sale consideration	Rs.1,01,28,226/- (As per page no. 29 of the complaint)
13.	Amount paid by the complainant	Rs.26,00,000/- As per page 9 of the complaint
14.	Occupation certificate /Completion certificate	05.04.2023
15.	Offer of possession	Not offered

16.	Reminders	28.02.2019, 25.03.2019 and 16.08.2023
17.	Pre-Cancellation notice dated	24.08.2023 [page 53 of the complaint]
18.	Final cancellation notice dated	01.10.2024 [Page 19 of the reply]
19.	Cancellation intimation email dated	14.10.2024 [Page 19 of the reply]
20.	Respondent sent an email to the complainant cancellation on	30.10.2024 [Page 20 of the reply]

#### B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
  - a. That the complainant is a HUF and representing his case through its Karta Anil Kumar Singhal. The complainant HUF is a family of peace-loving citizens of India. The complainant had invested its life savings and hard-earned money for purchasing of this Flat from the respondent for the benefits of its members.
  - b. That M/s Ramprastha Promoters and Developers Private Limited (herein after called "the Respondent") is a Private Limited Company, incorporated under the Companies Act, 1956/2013, having its office at the address mentioned above, which is engaged in the business of developing and promoting constructed and under constructed commercial/ residential areas. That the respondent is a company and has, at all material points of time, been and is still engaged in the commercial business of developing

and selling commercial and housing projects/flats and other construction layouts to various individuals and/or others in lieu of valuable considerations for earning profit, which is their primary objective.

- c. That the complainant received numerous calls from the marketing team of the respondent, about the "Primera" in Ramprastha City project in Sectors 37-D, Gurgaon, being developed by Ramprastha Group of Companies. They represented that "Ramprastha City" is an approved project and the respondent is inviting applications for allotment of residential flats(s) in their "Primera" project in "Ramprastha City" project in Sectors 37-D, Gurgaon, Haryana. The respondents had also shown some brochures and advertisement material of the said project to the complainant and assured the complainant that the allotment letter shall be issued upon payment of booking amount/first cheque & that the possession of the fully developed flat, shall be handed over/delivered maximum within 36 months from the date of booking amount/first cheque.
- d. That the respondent offered to sell the flat no. A-802 area 1720 sq. ft. along exclusive right of two covered car parking. The final cost of the flat measuring 1720 sq. ft. in the "the said project" was agreed by the respondent at Rs. 1,01,28,226/- Including service tax + PLC + two covered car parking. The respondent had assured/ promised that the possession of the fully developed flat, shall be handed over/ delivered to the complainant maximum within 36 months from the date of first cheque/ booking of the flat. The complainant had submitted signed booking application form with the



respondent but no copy of such form was provided to the complainant.

- e. That on the basis of assurances and promises of the respondent, the complainant submitted an undated booking application for allotment of a flat no. A-802 area 1720 sq. ft. along with exclusive right of two covered car parking in "Primera" in Ramprastha City project in Sectors 37-D, Gurgaon, (hereinafter called "the said project"), being developed by the respondent, along with cheque no. 554497 dated 02.11.2012 for Rs. 5,00,000/- drawn on Punjab National Bank, Ghaziabad, UP, towards booking amount.
- f. That the complainant had further paid Rs. 3,00,000/- vide cheque no. 117164 dated 15.01.2013 and Rs. 8,00,000/- vide cheque no. 117166 dated 03.07.2013 to the respondent. Till 03.07.2013 the complainant had paid Rs. 16,00,000/- in total to the respondent, but copy of booking application form has not been provided to the complainant. Further no receipt had been provided by the respondent to the complainant.
- g. That the complainant had visited the office of the respondent on 20.02.2014 and requested to provide copy of booking application form, payment receipts and allotment letter, regarding the amount earlier paid. The complainant had also requested the respondent to execute builder buyer agreement. Then the respondent had issued 3 receipts to the complainant on 20.02.2014 against the earlier accepted payment by the respondent mentioning the flat no. A-802, Primera, Ramprastha City, Sector -37D, Gurgaon, Haryana.



- h. That the respondent had issued allotment letter dated 20.02.2014 to the complainant, for flat no. A-802 area 1720 sq. ft. in their project naming "Primera" in Ramprastha City project in Sectors 37-D, Gurgaon, Haryana. That the respondent had issued undated welcome letter to the complainant for flat no. A-802 area 1720 sq. ft. in their project naming "Primera" in Ramprastha City project in Sectors 37-D, Gurgaon, Haryana. That through welcome letter, the respondent had promised to give world class infrastructure, futuristic-planning and seamless connectivity. Moreover, the respondent had also promised that "Ramprastha City" has been designed to give serene surrounding, comfortable living with picturesque landscape and unending greenery also.
- i. That the complainant had paid Rs. 26,00,000/- time to time in instalments against the demand letters issued by the respondent, but the respondent failed to give possession of the flat as promised by the respondent.
- j. The respondent had issued a demand letter cum invoice dated 23.03.2015 demanding Rs. 16,14,786/- on Invoicing for completion of basement roof. After that reminder -1 dated 28.02.2019 issued to the complainant along with account statement dated 05.03.2019 showing outstanding amount Rs. 68,03,869/- against the complainant. However, no demand letter was issued during the period 23.03.2015 to 05.03.2019 i.e. for a period of 4 year. After that reminder -2 dated 25.03.2019 was issued to the complainant along with account statement dated 26.03.2019 showing outstanding amount Rs. 68,03,869/- against the complainant. The





respondent had issued a "Final Reminder" dated 16.08.2023 for amount of Rs. 1,27,38,932/- to the complainant along with account statement showing interest amounting to Rs. 42,60,815/- without showing any rate of interest. However, no demand letter was issued during the period 25.03.2019 to 16.08.2023 i.e. for a period of 4 year and 5 months. The respondent also mentioned in this letter that such amount should be paid in 15 days. The respondent had also issued a pre - cancellation notice dated 24.08.2023 mentioning that amount to be paid till 30.08.2023. This pre - cancellation notice letter was served on 02.09.2023 on the complainant. However, demand letter issued after 01.05.2017 was illegal and invalid as no "Agreement to Sale" as per Section 13 of Rera Act, 2016 was executed between the complainant and respondent.

- k. That the respondent had issued a letter dated 10.02.2023 to the complainant that revised building plan has been given in - principal revised approval by Director, Town and Country Planning, Haryana, Chandigarh through Memo dated 31.01.2023. However, no confirmation has been taken by the respondent from the complainant as per Section 14 of the Rera Act, 2016 regarding the change in layout plan.
- l. That the complainant had visited the office of the respondent several times about copy of the signed booking application form and also execution of "Agreement to Sale" with the complainant. Respondent was sending demand letters but not executing "Agreement to Sale". However as per Section 13 of the Rera Act, 2016 the respondent cannot collect more than 10% from the



complainant without executing any "Agreement to Sale". The respondent had not executed "Agreement to Sale" with the complainant till date as per Section 13 of Rera Act, 2016 read with Rule 8 along with Annexure A of Haryana Rera Rules, 2017.

- m. That the possession of the flat was required to be given to the complainant within 36 months from the date of first cheque i.e. till 01.11.2016, but the possession of the flat has not been given by the respondent till date. The complainant had visited the office of the respondent several times and had also called them regularly but till date no sufficient/ satisfactory reply has been given by the respondent.
- n. That the complainant craves leave to add, to amend, to modify, to rescind, supplement or alter any of the grounds of complaint stated herein above, either before or at the time of hearing of this complaint.
- o. Therefore, the complainant is filing the present complaint, before this Hon'ble Authority, for copy of booking application form, execution of agreement to sale, possession of flat, execution of transfer deed, payment of interest for delay, and other remedies as per the prayer, may please be awarded to the complainant, in terms of the provisions of Rera Act, 2016. Since there is grave deficiency of service on the part of the respondent, the complainant also wants compensation from the respondent, so after the judgment of this Authority, the complaint may please be transferred before Adjudicating officer.

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



4. The complainant has sought following relief(s):
- Direct the respondent to execute "Agreement to Sale" as per Section 13 of Rera Act, 2016 read with Rule 8 of Haryana Rera Rules, 2017.
  - Direct the respondent to give Possession of the flat no. A-802, with complete Amenities & facilities mentioned in the brochure and in welcome letter along with delayed interest as per the provisions of Rera Act, 2016.
  - Direct the respondent to execute sale deed in favour of the complainant as per the applicable laws.
  - Direct the respondent not demand any GST amount as the price of the flat was fixed inclusive of Service Tax.
  - Direct the respondent not to demand any extra amount except the fixed amount relating to cost of flat.
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:
- At the outset, it is submitted herein that the present complaint is not maintainable before this Authority on account of due to lack of cause of action and lapse of limitation period. That the complainant herein has filed the present complaint before this Hon'ble Authority inter alia praying for possession along with penalties thereon against the booking of one residential flat no. A-802, 8th floor in the project "Primera" of the respondent.

- b. That furthermore, the complainants herein have not approached this Authority with clean hands and meticulously and fraudulently concealed their own deliberate defaults before this Authority. That time and again, the respondent herein has requested the complainants to come forward and visit the office of the respondent for post cancellation formalities. However, for the reasons best known to the complainants, the complainants failed to fulfil any formalities.
- c. 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 2012, 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. Therefore, the present complaint claiming for possession along with penalties is not maintainable on this account as well.
- d. That furthermore, the complainant has failed to produce any material documents on record to support any existence of contractual obligation between the parties which demonstrates default on the part of the respondent. More so, it is evident that the complainant herein is desperately attempting to take advantage of its own default which should be strictly dissuaded by this Court in the interest of justice and the well-established principles of law. That for this grave error, the complainant is liable to be penalized with exemplary costs.



- e. That at the threshold of the reply, it is submitted that the complaint is timed barred and therefore deserves to be set aside on this count alone, amongst other grounds that the respondent has raised through the present reply. Pertinently, the receipts on which the respondent is placing reliance upon dates back to the year 2012, whereas the complaint has been filed in 2024, evidently after a delay of 12 years. Neither any plausible explanation has been furnished by the complainants in respect of such delay nor any substantive ground has been raised in the complaint that would give way to condone such a phenomenal delay. Further, the delay itself is evident of the fact that the complainant did not wish to pursue his alleged rights against the respondent for several years and chose to wake up from slumber much later in a frivolous attempt to have his alleged rights indicated. In such circumstances, the Authority ought to dismiss the complaint with exemplary costs.
- f. That apart from the above-made submissions, 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.
- g. That it is complaint who have not come forward to take the possession and clear the pending dues as the complainant herein has paid only Rs.26,00,000/- against total agreed amount of Rs.1,01,28,226/- despite various reminders against the aforementioned unit. That due to non-payment of the dues by the complainant the respondent was bound to cancel the



aforementioned and the final cancellation notice was served upon the complainant on 01.10.2024.

- h. That the aforementioned allotment was cancelled as the complainant herein due to non-clearance of pending dues. That the intimation of the cancellation was emailed to the complainant herein on 14.10.2024, also it was intimated to the complainant to provide the account details to refund the entire amount paid by him without any deduction.
- i. That another reminder was sent by the respondent herein vide email dated 30.10.2024 to provide the cancelled cheque and the bank account details of the complainant herein. Despite various reminders the complainant herein has not provided the cancelled cheque and the bank account details to enable the respondent to refund the amount paid by the complainant.
- j. That it is submitted that the complainants are not "Allotees" and hence the proceedings are merely in the nature of recovery which is not maintainable before this Authority. It is submitted that despite the alleged communications of the complainants with the respondents with respect to refund, the complainants approach this Authority after 12 years of the date of booking and as such, this would go on to show that the complaint is barred by limitation and suffers from delay and laches. The complainants have not brought forth any cogent evidence much less argument that would suffice condonation of such kind of egregious delay.

k. 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. 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:**

8. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial Jurisdiction:**

9. 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:**

10. 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.*

11. 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.

**F. Findings on the relief sought by the complainant.**

- F.I Direct the respondent to execute "Agreement to Sale" as per Section 13 of Rera Act, 2016 read with Rule 8 of Haryana Rera Rules, 2017 and to give Possession of the flat no. A-802, with complete Amenities & facilities mentioned in the brochure and in welcome letter along with delayed interest as per the provisions of Rera Act, 2016.
12. The complainant was allotted unit no. 802, Tower A, area 1720 sq. ft. in the project "Primera", Ramprastha City Sector 37-C and D, Gurugram by the respondent/builder for a sale price of Rs.1,01,28,226/- and he has paid a sum of Rs. 26,00,000/- which is approx. 25% of the sale consideration. That no buyer's agreement was executed between the parties in respect of the allotted unit. It is further submitted that as per the terms of allotment, the due date for completion of the project was 20.02.2017. That the respondent obtained the occupation certificate (OC)



from the competent authority on 05.04.2023. Thereafter, the complainant was duly called upon to clear the outstanding dues and take possession of the allotted unit. However, the complainant failed to make the payment of the outstanding amount due against the said unit and did not take possession.

13. The respondent issued many reminders dated 28.02.2019, 25.03.2019 and 16.08.2023 thereafter issued Pre-cancellation notice dated 24.08.2023. Thereafter, cancelled the unit on 01.10.2024 and intimate to the complainant through an email dated 14.10.2024 and 30.10.2024.
14. The Occupation Certificate for the project of the allotted unit was granted on 05.04.2023. It is evident from the above mentioned facts that the complainant paid a sum of Rs. 26,00,000/- against sale consideration of Rs. 1,01,28,226/- of the unit allotted to him on 20.02.2014. The complainant has failed to adhere to the terms and conditions of the builder buyer agreement.
15. The respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.
16. However, the deductions of earnest money shall be made accordance with the applicable laws and as per the law of the land laid down by the Hon'ble apex court of the land in cases of *Maula Bux VS. Union of India*,

*(1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020) and Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:*

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

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17. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs. 26,00,000/- after deducting 10% of the sale consideration of Rs. 1,01,28,226/- being earnest money along with an interest @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 on the refundable amount, from the date of cancellation i.e., 01.10.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **H. Directions of the authority**

18. 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/promoter is directed to refund the paid-up amount of Rs. 26,00,000/- after deducting 10% of the sale consideration of Rs. 1,01,28,226/- being earnest money along with an interest @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 on the refundable amount, from the date of cancellation i.e., 01.10.2024 till its realization.
  - 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.



**HARERA**  
**GURUGRAM**

Complaint No. 4265 of 2024

19. Complaint stands disposed of.
20. File be consigned to registry.

Dated: 21.03.2025

  
**Ashok Sangwan**

**Member**

Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**