

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

Complaint no.: 4327 of 2024
Date of filing: 13.09.2024
Date of order: 27.05.2025

Prem Nagpal, Vipul Nagpal and Darshan Lal
Nagpal

R/o: - D-8, Ashok Vihar, Phase-I, Delhi-110052

Complainant

Versus

M/s Ramprastha Developers Private Limited
Regd. office at: - 114, Sec-44, Gurgaon, Haryana-
122002

Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Garvit Gupta (Advocate)	Complainants Respondent
Sh. Khush Kakra, Rajat Gupta	
and Gaytri Mansa (Advocate)	

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 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.	Rera Registered/not registered	Not Registered
5.	Plot no.	E-130 (As per page no. 47 of the complaint)
6.	Unit admeasuring	500 sq. yds. (As per page no. 47 of the complaint)
7.	Date of receipt	26.03.2012 (As per page no. 25 of the complaint)
8.	Date of Allotment letter	25.06.2014 (As per page no. 47 of the complaint)
9.	Date of execution of plot buyer's agreement	05.05.2014 (As per page no. 26 of the complaint)
10.	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. 41 of the complaint)
11.	Due date of possession	05.05.2017 (Note: Due date to be calculated 36 months from the date of execution of BBA i.e., 05.05.2014 including grace period of 6 months)
12.	Basic sale Price	Rs.30,00,000/-

		(As per page no. 35 of the complaint)
13.	Total amount paid by the complainant	Rs.51,25,000/-
14.	Occupation Certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That initially, M/s Ramprastha Developers Pvt. Ltd. had offered for sale plots in a Complex known as 'Ramprastha City' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector 37C and 37D, Gurugram.
- II. That the complainants had made the payment of rs. 30,00,000/- as per the demands raised by M/s Ramprastha Developers Pvt. Ltd. pertaining to the said booking. M/s Ramprastha Developers Pvt. Ltd. accordingly issued a receipt no. 2308 dated 26.03.2012 acknowledging the said payment. However, there was complete silence on the part of M/s Ramprastha Developers Pvt. Ltd. in allotting a specific plot number or executing the agreement with the complainants. However, it was assured by /s Ramprastha Developers Pvt. Ltd. that the plot to be allotted would be handed over within 3 years from the date of issuance of the receipt. Hence, the due date to handover the possession, as per the Respondents, was 26.03.2015.
- III. That However, suddenly, in 2013, M/s Ramprastha Developers Pvt. Ltd. informed to the Complainant, that all the rights, obligations, and liabilities of M/s Ramprastha Developers Pvt. Ltd. pertaining to the plot would be taken over by respondent and in lieu of the same, an agreement dated 05.05.2014 was executed between the complainants and respondent.
- IV. That the respondent shared a copy of a booking application form with the complainants containing several terms of the allotment. The complainants signed several blank and printed papers at the instance of the respondent

who obtained the same on the ground that the same were required for completing the booking formalities. The complainants were not given chance to read or understand the said documents and they signed and completed the formalities as desired by the respondent.

- V. That vide allotment letter dated 25.06.2014 i.e., almost after 2 years from the date of first payment, the respondent allotted a **Plot bearing no. E- 130** admeasuring 500 sq. yards in the said project. A welcome letter dated 25.06.2014 was issued by respondent to the complainants confirming the allotment of plot no. E-130 to the complainants. respondent further demanded payment from the complainants and the complainants made additional payment of Rs. 8,50,000/-, Rs.8,50,000/- and Rs.4,25,000/- and the same is evident from the receipts dated 03.06.2014 and 26.06.2014.
- VI. That the complainants made vocal their objections to the fact that no plot buyer's agreement was executed between respondent and the complainants. The complainants were then assured by respondent that the said agreement would be duly executed in some time. Furthermore, the respondent would timely handover the possession of the said unit to the complainants. Since the complainants had duly paid a huge amount out of their hard-earned money, they felt trapped and had no other option but to believe the assurances of the respondent.
- VII. That despite specific assurances of respondent that it would handover the possession of the plot within the stipulated time, it miserably failed to do so. The respondent failed to perform the most fundamental obligation of the allotment which was to execute a plot buyer's agreement with the complainants and then to actually handover the plot to the complainants against the full upfront consideration received by it, which in the present case has been delayed for an extremely long period of time. The failure of the respondent and the fraud played by them is writ large.

- VIII. That since no agreement was ever shared by the respondent with the complainant, hence no reliance can be placed on the clause of the booking application form which casts an obligation upon the respondent to handover the possession of the plot within 30 months from the date of agreement.
- IX. That the Authority placing reliance on the Judgment of the Hon'ble Supreme Court in the case of Fortune Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018- SC); MANU /SC /0253 /2018 has observed that in case there is no agreement or where no due date has been specified in the agreement, then a reasonable period of 3 years from the date of booking would be considered as an apt time in which the promoter was bound to handover the possession of a plot/unit/apartment. In the present scenario, the due date of handing over the possession would be calculated as 3 years from the date of booking. Since, the booking was made by the complainants on 26.03.2012, the due date of possession of the plot, as per the assurances of respondent and as per provisions of law was 26.03.2015.
- X. That over the year, the complainants met the representatives of respondent on several occasions and made it clear to them that they are in dire need of the residential plot and they had paid their hard earned money and savings to buy the plot from the respondent. The respondent yet again, with mala fide motives, gave an assurance that it would hand over the plot to the complainants. However, yet again, the assurances made by the respondent turned out to be false. No concrete steps were taken by the respondent for handing over of its physical possession to the complainants. The respondent kept on misleading the complainants by giving incorrect information and assurances that they would hand over the possession to the complainants very soon.
- XI. That on account of substantial delay on the part of respondent, the complainants vide several telephonic follow ups, conversations and in

person meetings reminded respondent of the obligations of handing over the physical possession of the plot to the complainants. However, no heed was paid to the legitimate request made by the complainants. The fact that the respondent was in a completely dominant position, as they had demanded and already received substantial amount from the complainants against the total price for the plot, and wanted to deliberately exploit the same at the cost of the innocent purchasers including the complainants is evident from the conduct adopted by them in their dealings with the complainants.

- XII. That the complainants visited the office of respondent several times in 2022 and enquired about the status of completion of sale modalities. The representatives of the respondent informed the complainants that the registration of the project with the authority was pending and upon its receipt, respondent or its relevant affiliate would complete all necessary formalities and paperwork for completion of the sale and hand over the possession of the plot. However, till date, such assurances of the respondent has not been complied with and the complainants after paying upfront the full consideration for purchase of the plot in one go is left with no concrete answers. The conduct of the respondent clearly shows that it has no intention of dealing with the innocent allottees such as the complainants despite demanding and receiving upfront a substantial sum of money from them as the total price for the plot.
- XIII. That the complainants have time and again requested the respondent to execute a plot buyer's agreement with the complainants and to handover the possession of the plot allotted to the complainants. However, the respondent failed to respond to any of the genuine concerns raised by the complainants and the multiple requests made by them vide telephonic calls and by visiting the office of the respondent to get the possession of the plot were in vain, for which the respondent had demanded payment of the total

price and been paid upfront by the complainants. The respondent despite the numerous reminders have failed to respond to the queries as raised by the complainants.

- XIV. That the complainants had paid Rs. 51,25,000/- out of the total sale consideration of Rs. 75,50,000/- which is more than 100% of the total sale consideration. Yet, despite the payment of more than the total sale consideration, the respondent had failed to execute a plot buyer's agreement with the complainants and handover the possession to the complainants despite lapse of the due date of possession.
- XV. That the respondent is enjoying the valuable amount of consideration paid by the complainants out of their hard-earned money and the complainants realizing the same, demanded delayed possession charges from the respondent. The respondent has in complete defiance of their obligations refused to hand over the possession to the complainants along with delayed possession charges leaving them with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainants are entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 beside compensation for huge mental torture and misrepresentation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.
 - ii. To execute a Plot Buyer's Agreement pertaining to the allotted unit with the Complainants.
 - iii. To handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.
 - iv. To execute the Conveyance deed of the allotted unit in favour of the Complainant.

- v. To not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the Agreement.
 - vi. Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the Complainant.
5. The respondent-promoter have failed to file a reply despite several opportunities granted by the authority. It shows that the respondent is intentionally delaying the procedure of the Authority by avoiding to file the written reply. In view of the above, Hence, in view of the same, the Authority has no option but to proceed ex-parte against the respondent in the above mentioned complaint.

D. Jurisdiction of the Authority.

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.

D.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)(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.

E. Findings on the relief sought by the complainant.

- E.I Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.**
- E.II To execute a Plot Buyer's Agreement pertaining to the allotted unit with the Complainants.**
- E.III To handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.**

10. That the complainant was allotted a plot no. E-130 in the respondent's project "Ramprastha City," Sector 37C and 37D, Gurugram, vide allotment letter dated 26.06.2014. Subsequently, a agreement for the subject unit was executed between the complainant and respondents on 05.05.2014 for a basic sale consideration of Rs.30,00,000/-.

11. It is important to note that the Hon'ble Punjab and Haryana High Court, in CWP No. 24591-2024 titled as M/s Ramprastha Developers Private Limited and Ors. and State of Haryana and Ors., the Court observed that the statutory meaning of "allottee" covers both actual and prospective allottees, in respect of ongoing or future projects. It specifically held that:

" 27 Though the learned counsel for the petitioners hass vehemently argued before this Court, that the present respondent is not an allottee, since it becomes displayed by Annexure P-33, contents whereof also become extracted hereinabove, that he has only tendered money in respect of prospective spective projects, project and when evidently no prospective

project have ever been floated at the instance of the present petitioners, therebys at this stage, stage there was no activated cause of action vesting in the present petitioners. However, the said argument is also rudderless nor has any telling effect vis-à-vis the locus standi of the present respondent to institute the subject complaints. The reason being that, when within the ambit of the statutory meaning assigned to an 'allottee', wherebys becomes covered also potential as well as prospective allottees, vis-a-vis the prospective projects, therebys not only in respect of ongoing projects, but also in respect of projects to be launched in future... the present respondent but became a person/allottee in terms of Annexure P-3 he became promised to be made, the 18 of 19 Neutral Citation No:=2025:PHHC:019155-DB CWP-24591 24591-2024 allotments vis-a-vis projects to be undertaken in future, wherebys also the present respondent was a person/allottee person/allottee who would subsequently acquire the subject project through sale or transfer thereof being made in his favour "

12. The Hon'ble High Court concluded that the respondents, having paid consideration for a plot in a future potential project, fell within the statutory definition of allottee, despite the absence of a registered project
13. 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."*

14. 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)

15. 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., 05.05.2014 which comes out to be 05.05.2017.

16. 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.*

17. 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.

18. 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., 27.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

19. 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;"*

20. 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.

21. 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 05.05.2014, the possession of the subject unit was to be delivered within 36 months including grace period of 6 months from the date of execution of this agreement. Therefore, the due date of handing over possession comes out to be 05.05.2017. 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 05.05.2014 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.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the 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. 05.05.2017 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.

E.IV To execute the Conveyance deed of the allotted unit in favour of the Complainant.

23. 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 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."

24. 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.

E.V To not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the Agreement.

25. The complainant took a plea that the respondent raised demand contrary to the terms of the agreement. Therefore, the respondent-builder is directed not charge anything which is not part of buyer agreement.

E.VI Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the Complainant

26. The complainant has not clearly identified the defaults and illegalities under RERA Act, 2016. Without specific details about the alleged defaults and illegalities, there is no basis for the relief sought. Therefore, no directions or relief can be granted to the same.

F. Directions of the authority.

27. 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/promoters are directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 05.05.2017 till offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession, 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 05.05.2017 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.

28. Complaint stands disposed of.

29. File be consigned to registry.



Ashok Sangwan
Member



Arun Kumar
Chairman



Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025