

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM.**

**Complaint No. 6735 of 2022
Date of Decision: 05.08.2025**

**Sanjay Sehgal, resident of Flat No. C-502, Suncity Heights,
Sector 54, Gurugram-122002.**

.....Complainant.

Versus

**M/s Ramprashtha Promoters and Developers Pvt. Ltd.
Registered Office at C-10, C-Block, Market Vasant Vihar, New
Delhi-110057 and Plot No. 114, Sector 44, Gurgaon Haryana
HR-122002.**

.....Respondent.

APPEARANCE

For Complainant:	Mr. Kuldeep Kumar Kohli, Advocate.
For Respondent:	None (Respondent exparte vide order dated 24.08.2023).

ORDER

This is a complaint filed by Sanjay Sehgal (allottee), under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 against Ramprastha promoters and developers Ltd. (promoter/ developer).

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2. Briefly stated, according to complainant, relying on the various representations and assurance given by and on behalf of the respondent company, he (complainant) booked a unit in a project of respondent by paying an amount of Rs.3,50,000/- on 27.08.2009. A unit bearing no. 1004, 10th floor, tower no. C, in Sector 37D, having super area measuring 1485 sq. ft. under subvention scheme was allotted to him. The payment was acknowledged by the respondent vide receipt dated 27.08.2009.

3. That the respondent sent an allotment letter dated 21.09.2010 to the complainant providing the details of the project, confirming the booking of the unit for a total sale consideration of Rs.38,99,250.00, which included basic price, plus EDC and IDC, car parking charges and other specifications of the allotted unit.

4. That the respondent sent a letter to the Housing Development Finance Corporation Limited for providing the confirmation to the bank that the said unit in the project has been sold to the complainant for the total sale consideration of Rs.38,99,250.00 further confirming that the project had got building plan approval from the authority. Thereafter a tripartite agreement dated 21.09.2010 was executed among the parties of this case and Housing Development Finance Corporation Limited.

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5. That as per clause 3 of the above said agreement, the respondent was under liability to pay the Pre-EMI's to the HDFC bank till 31.08.2012 or till the handing over the possession of the said unit. As per payment plan and demand raised by the respondent in provisional allotment letter, the complainant paid a sum of Rs.2,71,250.00 on 15.12.2009.

6. That a supplementary agreement was also executed between the parties on 18.06.2010. As per clause 2 of the said agreement, the respondent agreed to pay the pre-EMI's to bank till 31.08.2012. Furthermore, as per clause 4, the respondent agreed to deliver possession of said unit on or before 31.08.2012. Under the subvention scheme, the complainant was to pay 15% of the total cost of the apartment including the increased amount of Rs.5,84,888.00 and HDFC Bank was to pay 75% of the total cost of the apartment on behalf of the complainant.

7. The bank ^{disbursed} ~~dispersed~~ an amount of Rs.29,24,438.00 to respondent against the cost of apartment. Thereby, the respondent received around 90% amount of the total sale consideration of the apartment. Till filing of this complaint, the complainant had paid to the respondent total of Rs.11,53,750.00.

8. That he (complainant) received letters dated 09.10.2010 and 30.09.2010 from the Bank and also a statement of

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account dated 09.10.2010. As per statement of account, respondent had received an access amount of Rs.5,51,038.50/- from the complainant. It (respondent) was liable to return the same. The complainant sent a letter dated 22.01.2011 to respondent.

9. An apartment buyer agreement was executed between both ^{of} the parties on 21.09.2010. As per clause 1.5 (a) of the apartment buyer agreement, the respondent had to deliver the possession of the apartment by 31.08.2012 plus grace period of 120 days. In this way, due date of possession comes out to be 31.12.2012.

10. That as per subvention scheme and tripartite agreement, the respondent was liable to pay the pre EMI's to the HDFC Bank till 31.08.2012 or till the handing over the possession of the said unit but the respondent has failed to pay the same and the liability of same has been transferred to the complainant. Now it is innocent complainant, who is paying the pre- EMI's without getting the possession the said unit.

11. That he (complainant) after several requests and emails, received an offer of possession on 14.07.2017. The respondent in statement of account has raised several illegal demands i.e. about increase in the super area amounting to

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Rs.1,41,670.00, electrification charges, water connection charges, VAT etc., which were never the part of the payment plan, provided along with allotment letter and the Buyer's Agreement.

12. That being aggrieved by the acts of the respondent, the complainant filed a complaint before the Haryana Real Estate Regulatory Authority, Gurugram bearing complaint no. RERA-GRG-308-2021. The said complaint was disposed of by the Authority, Gurugram vide judgment/order dated 30.07.2021. The delay in handing over possession till date of filing complaint has been 8 years 10 months and 30 days.

13. Citing facts as described above, the complainant has sought following reliefs: -

i. To direct the respondent to pay compensation of Rs.10,00,000/- for mental, physical agony, emotional trauma faced by him (complainant).

ii. To direct the respondent to pay compensation of Rs.17,22,700/- for loss of rental income @ rate of Rs.16,100/- per month as prevalent in the vicinity of the project and allotted unit.

iii. To direct the respondent to pay compensation of Rs.3,00,000/- for legal fee of the lawyer.

iv. Any other relief which the Hon'ble Adjudicating Officer may deem fit in the present case.

14. The respondent contested the claim of complainant by filing a written reply. It is averred that present complaint is not

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maintainable as the offer of possession has already been given to the complainant on 31.01.2020. ^hThat default in delivery of possession of property occurred due to default on the part of the complainant. Huge dues are pending against him (complainant), which needed to be settled. The complainant can come forward with the necessary documents in order to take the possession of the said unit.

15. Stating all this, the respondent has prayed to dismiss the complaint.

16. The respondent was proceeded ex parte vide order dated 24.08.2013. Complainant filed affidavit in support of his claim.

17. I have heard learned counsel appearing on behalf of complainant and perused the record on file.

18. Admittedly, complaint No. 308/2021 filed by present complainant seeking delay possession compensation has already been allowed by the Authority vide order dated 30.07.2021. Complainant has been granted interest at the prescribed rate of 9.30% per annum for every month of delay on the amount paid by him from the due date of possession i.e. 31.08.2012 till the date of handing over possession. I find weight in the plea of respondent claiming that award of interest was in the form of compensation.

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19. As per Section 18 (1) of Act of 2016, if promoter fails to complete or 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, (b)-----, 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 or 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.**

20. It is worth mentioning here that complainant did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of 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 handing over of possession, at such rate as may be prescribed. Rule 15 (1) of The Haryana Real Estate (Regulation and Development) Rules 2017 makes it clear that for the purpose of proviso to section 12,

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section 18 and sub section 4 and sub section 7 of section 19 "interest at the rate prescribed" shall be the State Bank of India higher than marginal cost of landing rate plus 2%. Thus, the provision of interest is in the form of compensation to the buyer when the promoter failed to complete the project in agreed time. The parliament did not intend to provide compensation separately as in case of refund of the amount described above.

21. In upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra"** Appeal No. 70 of 2023 decided on 20.04.2023-----;

"13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

22. When complainant has already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow

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separate compensation for same cause of action i.e. delay in delivering of possession. Complaint in hands is thus dismissed.

23. File be consigned to record room.

Announced in open court today i.e. on 05.08.2025.



(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.