

PROCEEDINGS OF THE DAY		36
Day and Date	Friday and 29.07.2022	
Complaint No.	CR/109/2019 Case titled Gagan Bhatia V/s M/s Ramprastha Promoters and Developers Private Limited	
Complainant	Gagan Bhatia	
Represented through	Shri Nilotpal Shyam Advocate	
Respondent	M/s Ramprastha Promoters and Developers Private Limited	
Respondent Represented	Shri Dheeraj Kapoor Advocate	
Last date of hearing	07.02.2022 (transferred from AO)	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings The present complaint was filed on 15.01.2019 and the reply on behalf of respondent was received on 20.09.2019. File has been received on transfer from Adjudicating Officer in view of the judgment dated 11.11.2021 passed by the Apex Court in the case bearing no. SLP(Civil) No(s). 3711-3715 OF 2021) titled as M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors., and wherein it was held that as matters regarding refund and interest under section 18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the Adjudicating officer. Succinct facts of the case as per complaint and annexures are as under:		
S. N.	Particulars	Details
1.	Name of the project	“RISE”, Sector 37D, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम
20/11/2019

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

3.	Registered area	48364 sq. mt.
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]
9.	RERA Registered/ not registered	Registered vide no. 278 of 2017 dated 09.10.2017
10.	RERA registration valid up to	30.06.2019
11.	HARERA extension certificate no.	08 of 2020
12.	Extension certificate detail	Date
		Validity
		In principal approval on 17.06.2019
		30.12.2020
13.	Allotment letter	26.04.2012 (Page no. 12 of the reply)
14.	Date of booking application form	20.11.2011 (Page no. 36 of the reply)

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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15.	Date of execution of apartment agreement	01.08.2012 (Page no. 16 of the complaint)
16.	Unit no.	D-201, 2 nd floor, tower/block- D (Page no. 18A of the complaint)
17.	Unit area admeasuring	1825 sq. ft. (Page no. 18A of the complaint)
18.	Possession clause	15. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over <i>the possession of the Apartment by September 2015 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i> (Emphasis supplied) (Page no. 23A of the complaint)
19.	Due date of possession	30.09.2015 [As per mentioned in the buyer's agreement]

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20.	Total sale consideration	Rs.86,34,219/- (As per schedule of payment page 30A of the complaint)
21.	Amount paid by the complainant	Rs.69,93,049/- (As per receipt information page 50 of the reply)
22.	Occupation certificate /Completion certificate	Not received
23.	Offer of possession	Not offered
24.	Delay in handing over the possession till date of filing complaint i.e., 15.01.2019	3 years 3 months and 16 days

Note: - The matter was referred to adjudicating officer (mediator) for mediation vide order dated 17.11.2020. Despite deliberations, no settlement could be arrived between the parties. So, the matter was referred back to the authority vide order dated 07.01.2021.

The complainant has sought following relief:

- 1. Direct the respondent to refund the amount of Rs.69,93,049/- along with prescribed interest per annum on compounded rate from the date of booking of the flat in question.**

The instant matter falls in the category where the promoter has failed to complete or unable to give possession of the unit in accordance with terms of the agreement for sale or duly completed by the date specified therein and still OC has not been obtained/possession has not been handed over.

Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम 16/09/2019

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The due date of possession as per agreement for sale as mentioned in the table above is **30.09.2015** and there is delay of 3 years 3 months and 16 days on the date of filing of the complaint.

The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021**

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) 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.** it was observed

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the



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allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

The authority hereby directs the promoter to return the amount received by him i.e., Rs.69,93,049/- with interest at the rate of 9.80% (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

Complaint stand disposed of. Detailed order will follow. File consigned to the registry.

V.I-3

Vijay Kumar Goyal
Member

[Signature]

Dr. KK Khandelwal
Chairman
29.07.2022