

PROCEEDINGS OF THE DAY		42
Day and Date	Friday and 13.01.2023	
Complaint no.	CR/196/2022 Case titled as Satya Wanti and Deepak Gulia V/s M/s Ramprastha Promoters and Developers Private Limited	
Complainants	Kusum Jain and Vishal Jain	
Represented through	Shri Harshit Batra, Advocate	
Respondents	1. M/s Ramprastha Promoters and Developers Private Limited. 2. M/s Bulebell Proptech Private Limited	
Respondents represented through	Ms Gayatri Mansa and Navneet Kumar, Advocates	
Last date of hearing	25.11.2022	
Proceeding recorded by	Naresh Kumari and HR Mehta	
Proceedings		
The present complaint has been received on 21.01.2022 and the reply on behalf of respondent was received on 29.04.2022.		
Succinct facts of the case as per complaint and annexures are as under:		
S. N.	Particulars	Details
1.	Name of the project	"SKYZ", Sector 37C, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	102000 sq. mt.



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/196/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

4.	Nature of the project	Group housing complex	
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. 320 of 2017 dated 17.10.2017	
10.	RERA registration valid up to	31.03.2019	
11.	Extension applied on	17.06.2020	
12.	Extension certificate no.	Date	Validity
		In principal approval on 12.06.2019	30.03.2020
13.	Unit no.	303, 3 rd floor, tower/block- D (Page no. 21 of the complaint)	
14.	Unit area admeasuring	1750 sq. ft. (Page no. 21 of the complaint)	
15.	Date of execution of tripartite agreement	24.09.2012 (Page no. 73 of the complaint)	

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 अर्तगत गठित प्राधिकरण

भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/196/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

16.	Date of execution of apartment agreement buyer	05.12.2011 (Page no. 16 of the complaint)
17.	Possession clause	<p>15. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p>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 31.08.2014 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></p> <p>(Emphasis supplied)</p> <p>(Page no. 31 of the complaint)</p>
18.	Grace Period	<p>Not utilized</p> <p>The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days</p>

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



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/196/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

		for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.
19.	Due date of possession	31.08.2014 [As per mentioned in the buyer's agreement]
20.	Total sale consideration	Rs.67,52,713/- (As per payment plan page no. 48 of the complaint)
21.	Amount paid by the complainants	Rs.59,41,070/- (As per receipt information page no. 61 of the complaint)
22.	Occupation certificate /Completion certificate	Not received
23.	Offer of possession	Not offered
24.	Delay in handing over the possession till date of this order i.e., 13.01.2023	8 years 4 months and 13 days

The complainants have sought following relief:

- To direct the Respondents to provide the legal offer of possession to the Complainant after receipt of occupancy certificate for the concerned tower and to make the same available to the Complainants**

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 अर्तगत गठित प्राधिकरण

भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/195/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

as per Section 11(4)(b) of the Act.

The respondent is legally bound to meet the pre-requisites for obtaining an occupation certificate from the competent authority. It is unsatiated that even after the lapse of more than 8 years from the due date of possession the respondent has failed to apply for OC to the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC.

2. To direct the Respondents to provide the prescribed rate of interest on delay in handing over of possession of the Apartment on the amount paid by the Complainants from the due date of possession as per the Buyer's Agreement till the actual date of possession of the Apartment as per Section 18(1) of the Act;

Considering the above-mentioned facts, the due date of possession as per clause 15 (a) of the apartment buyer's agreement executed between the parties on 05.12.2011, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.08.2014. It is pertinent to mention over here that even after a passage of more than 8.4 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project.

The authority allows DPC at the prescribed rate of interest and it has been prescribed under rule 15 of the rules. 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.

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., 13.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges. Accordingly, the complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CA/196/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana


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


the prescribed rate of interest i.e., 10.60% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 31.08.2012 till handing over of possession.

3. To execute the conveyance deed as per section 17 and 11(4)(f) of the Act.

The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining occupation certificate from the competent authority. On successful procurement of it, offer a valid make of possession to the complainants and execute the conveyance deed within 3 months from the date of obtaining the occupation certificate.

Matter stands disposed off. Detailed orders will follow. File be consigned to the registry.


Sanjeev Kumar Arora
Member

v.1-
Vijay Kumar Goyal
Member
13.01.2023