



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 271 OF 2022

Divija Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

2. COMPLAINT NO. 272 OF 2022

Divija Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

3. COMPLAINT NO. 273 OF 2022

Divija Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

4. COMPLAINT NO. 277 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

5. COMPLAINT NO. 278 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

6. COMPLAINT NO. 279 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

7. COMPLAINT NO. 280 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

8. COMPLAINT NO. 281 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

9. COMPLAINT NO. 282 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

10.COMPLAINT NO. 283 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

11.COMPLAINT NO. 284 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

12.COMPLAINT NO. 285 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

13.COMPLAINT NO. 286 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

14.COMPLAINT NO. 287 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

15.COMPLAINT NO. 288 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

16.COMPLAINT NO. 289 OF 2022

Chaman Lal Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

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17.COMPLAINT NO. 290 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

18.COMPLAINT NO. 291 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

19.COMPLAINT NO. 292 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

20.COMPLAINT NO. 293 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

21.COMPLAINT NO. 294 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

22.COMPLAINT NO. 295 OF 2022

Ritu Gupta

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RESPONDENT

23.COMPLAINT NO. 296 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

24.COMPLAINT NO. 297 OF 2022

RituGupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

25.COMPLAINT NO. 298 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

26.COMPLAINT NO. 299 OF 2022

Ritu Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

27.COMPLAINT NO. 300 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

28.COMPLAINT NO. 301 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

29.COMPLAINT NO. 302 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

30.COMPLAINT NO. 303 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

31.COMPLAINT NO. 304 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

32.COMPLAINT NO. 305 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

33.COMPLAINT NO. 306 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

34.COMPLAINT NO. 307 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

35.COMPLAINT NO. 308 OF 2022

Rajesh Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

36.COMPLAINT NO. 309 OF 2022

Anushka Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

37.COMPLAINT NO. 310 OF 2022

Anushka Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

38.COMPLAINT NO. 311 OF 2022

Anushka Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

39.COMPLAINT NO. 312 OF 2022

Anushka Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT



40.COMPLAINT NO. 313 OF 2022

Vandna Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

41.COMPLAINT NO. 314 OF 2022

Vandna Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

42.COMPLAINT NO. 315 OF 2022

Vandna Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

43.COMPLAINT NO. 316 OF 2022

Saroj Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

44.COMPLAINT NO. 317 OF 2022

Saroj Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

45.COMPLAINT NO. 318 OF 2022

Sukrit Gupta

COMPLAINANT

VERSUS



RPS Infrastructure Ltd.

RESPONDENT

46.COMPLAINT NO. 319 OF 2022

Sukrit Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

47.COMPLAINT NO. 320 OF 2022

Nitin Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

48.COMPLAINT NO. 321 OF 2022

Nitin Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

49.COMPLAINT NO. 322 OF 2022

Bhuvan Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

50.COMPLAINT NO. 323 OF 2022

Bhuvan Gupta

COMPLAINANT

VERSUS

RPS Infrastructure Ltd.

RESPONDENT

51.COMPLAINT NO. 324 OF 2022

Saroj Gupta

COMPLAINANT



VERSUS

RPS Infrastructure Ltd.

RESPONDENT

CORAM: Parneet Singh Sachdev
Nadim Akhtar
Dr. Geeta Rathee Singh
Chander Shekhar

Chairman
Member
Member
Member

Date of Hearing: 04.07.2024

Hearing: 9th in all the captioned complaints.

Present: Mr. Munish Gupta, Ld. counsel for the complainants in all complaints.
Mr. Garvit Gupta, Ld. counsel for the respondent in all complaints.

ORDER (PARNEET S SACHDEV -CHAIRMAN)

1. Ld. Counsel for complainants stated that earlier a bunch of 75 complaints was ongoing. However, now these complaints are categorized into two groups upon review of the files:

- i. Complaints from serial no. 1 to 51 in last order dated 21.03.2024 are identical, as they contain proper payments receipt, and memoranda of understanding executed and conditions persisting in the memoranda of understanding are same. Furthermore, it is pertinent to mention that from serial no. 1 to 3 i.e., complaint no. 271, 272 and 273 of 2022 include memorandum of understanding of allottee Ms. Divija Gupta



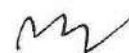
(complainant in these complaints). However. From serial no. 4 to 51, complainant's name is different, but memorandum of understanding attached pertains to the allottee Ms. Divija Gupta.

ii. Secondly, complaints from serial no. 52 to 67 in last order dated 21.03.2024 do not include receipt or a memorandum of understanding, but only a ledger attached in the complaint book

2. Last order dated 21.03.2024 passed by the Authority is reproduced below:

"Learned counsel for respondent seeks one last opportunity to settle the captioned matters as they are willing to engage in negotiations with complainants in an effort to resolve the issues. Learned counsel for complainants agreed to come at a settlement provided that respondent offers reasonable terms of settlement. He further stated that complainants are ready to accept a lump sum payment ranging from 20% to 25% of the total amount payable by respondent, with the remaining balance to be paid in instalments.

Authority is of the view that terms of settlement cannot be decided by the Authority. However, Authority grants one last opportunity to both the parties, to arrive at an amicable settlement. In case, settlement arrives between the parties, both the parties are directed to place on record the terms of settlement before the Authority at least 15 days before the next date of hearing. If no settlement is arrived at between the parties, case will be heard on merits on next date of hearing. Both the parties are also directed that if they wish to file some documents or written submission related to the ibid complaints, they may file the same atleast 7 days before the next date of hearing. Thereafter, no further opportunity to place on record any documents will be granted.



Authority also directs that Chairman/ MD of respondent company shall remain present physically on next date of hearing."

3. Learned counsel for the complainant stated that in compliance with the last order, an email was sent to the complainants on 20.04.2024 stating:

"As stated during the last hearing dated 21.03.2024 before the Hon'ble RERA Authorities, in compliant cases filed by you and your other family members against the company, the company- RPS Infrastructure Ltd. wishes to meet, sit together and look forward to discuss the settlement of your grievances. We propose a meeting on 25.04.2024 at the place and time convenient to you."

In response to the above email, the complainants replied via email on 22.04.2024 requesting a proper proposal first containing the terms of settlement; thereafter, a meeting could be conducted. Subsequently, on 30.04.2024, another email was sent on behalf of the respondent stating:

"As submitted earlier, the company- RPS Infrastructure Ltd. wishes to meet, sit together, and look forward discussing the settlement of your grievances and explore the feasible resolution. On behalf of the company, Mr. Justice Bharat Bhsihan Parsoon, High Court Judge (since retired) will join the meeting and deliberate upon the grievances

of both the parties. We request you to please share with us the meeting schedule convenient to you."

He stated that as per last order, respondent was willing to settle all the matter claiming that they are all family and they will sit down to discuss the terms of settlement and now they are involving some third person for the purpose of settlement. Therefore, in reply to the above said email, complainants wrote another email on 06.05.2024, stating that:

"Reference to your above message, I would like to state that in last court hearing, learned judge had remarked that your MD should contact and work out proposal. There is no reason to involve any third party. Since we have already had a series of meetings with Mr. Rakesh Gupta and Mr. Shanti Parakash Gupta, Chairman/MD of the company, in past without any result. It would be better that first the MD or the Director send us a proposal to save precious time of both the parties we shall then invite them for a meeting if we find your proposal worth discussing."

All subsequent emails dated 16.05.2024, 31.05.2024, 13.06.2024 were in the same vein as the above emails. Meanwhile, a civil suit has been filed by another brother involving both of us as parties to that suit in Faridabad.



However, this suit is unrelated to the complaints in question. In line with this, the last email was sent by the complainants to the respondent dated 26.06.2024, stating:

"Suit before Faridabad Court appears to be conscious and collusive effort on your part and that's why reference has been made in your message to same. Said suit is only frivolous. We reiterate and request you to come up with any options which you want to lay before us for settlement. Please keep third parties out of this matter. We want our money back with interest assured by you. Only thing required from your side is to please apprise us the manner and time frame in which you wish to refund the same. Your counsel is to please apprise us the manner and time frame in which you wish to refund the same. Your counsel has thrice taken dates for this purpose only and by making reference of family relations. However, you are now involving outsiders which is not appreciated. Anyhow, still await your reply regarding manner of refund. If you are serious to resolve then give concrete proposal."



4. Concluding all the emails, learned counsel for complainants stated that no meeting ever occurred between the parties and no settlements have taken place in any of the complaints to date.
5. The Authority noted that, as per last order, three specific directions were given to both the parties. Firstly, in the event of a settlement, to place on record the settlement deed in the registry at least 15 days before the next hearing date; secondly, both parties were given a final opportunity to file any documents or written submissions related to the ibid complaints atleast 7 days before the next date of hearing. Additionally, the Authority directed that the Chairman/MD of the respondent company must be physically present on the next hearing date. The Authority enquired from both parties regarding compliance with these directions.
6. Learned counsel for complainants stated that no settlement has taken place between the parties till date. With regard to the second direction, learned counsel for both the parties confirmed and submitted that they do not wish to file any further documents in any of the captioned complaints. Furthermore, Mr. Rakesh Gupta, MD and Mr. Shanti Prakash, Chairman of respondent company are present in today's hearing.
7. Mr. Rakesh Gupta, MD of respondent company stated that members of our family have been investing frequently since the company was established in

the year 2004. During the financial crisis in the year 2015-2016, personal property, agricultural land, and two companies owned by the MD were transferred to Mr. Chaman Lal Gupta without any consideration, with the condition that any funds received from RPS Infrastructure Ltd. in future would belong to the MD of the respondent company. Memorandum of Understandings (MOUs) was executed solely for security purposes; no specific units were allotted to the complainants. He further asserts that no settlement can occur in captioned complaints. Both parties agreed that the cases should be decided solely on their merits.

8. Ld. Counsel for complainants referred to complaint no. 271 of 2022 titled as "Divija Gupta versus RPS Infrastructure Ltd." and drew the attention of the Authority to Annexure C-1 of the complaint book, i.e. a receipt issued by the respondent company against payment of ₹25,00,000/- to the complainant (Divija Gupta). The receipt clearly states, "*₹25,00,000 vide cheque/ draft/ pay order no. 032192 dated 24.07.2014 drawn on OBC Bank Faridabad Tower/ Block "Tower -05" Unit no. T-05-1206 on account of Booking amount + installment + service tax in RPS Auria, RPS City, Sector 88, Faridabad.*" He further notes that this receipt, dated 24.07.2014, indicates that the payment was made on that date and not earlier, contradicting the respondent's claim that it was a security measure during their 2014 financial troubles. Moreover,

the receipt also specifies the unit details of the complainant which was allotted to her at the time of booking. Further, receipt also mentions that the said amount is taken as on account of booking amount plus installments in the respondent's project namely "RPS Auria, RPS City, Sector 88, Faridabad, clearly indicating that a specific unit was allocated to the complainant and that the complainants fall within the definition of allottees in these complaints.

9. He further refers to the Memorandum of Understanding dated 27.10.2014 annexed as Annexure C-2 in the complaint book wherein it is clearly mentioned that the MOU is executed between "*M/s RPS Infrastructure Ltd. and Ms. Divija Gupta D/o Sh. Nitin Gupta herein, singly/ jointly referred to as the "Second Party/ Applicant/ Allottee....."*". It is evident from this MOU that Ms. Divija Gupta is referred to as an allottee. He then mentions para B of the said MOU, wherein it is written that "*Allottee has also checked, verified, and appraised himself withconcerning the said project*", *Allottee undertakes to comply with the same in letter and spirit*. He further referred to Para 1 on page no. 21 of the MOU, which states "*the first party hereby agrees to allot to the second party, a total no. of 3 units.*" Therefore, it is very clear from the above lines, that respondent company allotted these 3 units to the complainant against the total sale consideration of ₹1,99,95,004 (for 3 units). The Authority asked the Id. Counsel for complainants whether Divija Gupta

was a minor at the time of executing of the MOU. To which, he replied that at the time of MOU's execution, complainant Divija Gupta was a minor. Hence her father, Mr. Nitin Gupta, signed the MOU on her behalf. But she is now of legal age i.e., major.

10. He further refers to Para 3 of the MOU which states that "*the second party has paid a sum of ₹72,75,196/- against amount due on account of net sale consideration till date. However, the second party has also paid a sum of ₹2,24,804/- against the service tax as applicable.*" Further, Para 6 states that "*That as a special offer Allottee has right to surrender the said unit as per following terms and condition*". Consequently, Option I and Option II were provided by the respondent for surrendering the units. The complainants opted for option II. As per option II "*after completion of 50 months from the date of this MOU, if the allottee is not satisfied with the development of the project/area or appreciation in property prices is not visible in near future or due to any of its personal decision, an option to surrender the unit is available with him. Surrender value in such an eventuality will be calculated as per Annexure-B attached with this MOU. Allottee will have to communicate his decision to surrender the unit under option 2 above with a written request, three months prior to the end of 50 months period. After receipt of written request of the allottee the company will refund the fixed*

surrender value as per Annexure B. however, after receipt of such request, the allottee will have no interest/ right of any nature whatsoever may be in the unit except the right to get the fixed surrender value from the company & this MOU shall stand cancelled."Annexure-B on page no. 26 of the complaint mentions that "*calculation of fixed resale consideration as per option 2 of Para6:-on completion of 50 months from the date of MOU fixed resale consideration of ₹1,50,00,000/- will be granted.*"The said MOU was executed on 27.10.2014 and the option to surrender was communicated by the complainant upon completion of 50 months, via email dated 10.09.2018 and a registered letter dated 30.11.2018 Annexure C-5 and C-6 respectively.

11. Furthermore, the respondent failed to refund the amount despite receiving emails and letters. Therefore, the present complaints were filed by the complainants seeking relief in the form of payment of fixed resale consideration amounting to ₹50 lacs, as agreed upon in Clause 6 of the MOU dated 27.10.2014, (upon completion of 50 months from the date of MOU), as option 2 was submitted by the complainant along with interest.
12. In addition to the above arguments, the Id. counsel for complainants also draws the attention of the Authority to the reply wherein, the respondent agreed to the Annexure C-1, i.e., receipt annexed by complainants in their complaint books. However, he disputes the Annexure C-2, i.e., Memorandum



of understanding annexed in the complaint. He refers to page no. 3 Para 2(b) of reply which states that *"that the complainant and her family members are family and friends of the director of respondent company and have been investor partners/ financiers of the respondent company and have advanced money to the respondent from 2007-08 onwards. The directors of respondent company had from time to time returned the amount to the complainant and her family members and same is evident from a brief statement of account attached herewith as Annexure R2. It is pertinent to mention herein that in the year 2014-2015, the complainant and her family members had offered to extend financial help. However, complainant and her family members had demanded security, for the sake of memory and record, for the repayment of the said money advanced. For this purpose, complainant and her family members from the respondent which were styled as receipt. Copy of the certificate under section 65B of the Indian Evidence Act, 1872 is attached as Annexure R3."* According to the version of respondent, the amounts were paid by the complainants in the year 2014-15, for which receipts were issued, but these receipts were only for security purposes. However, the word "security" does not appear in the receipts. He further refers to para 3 on page no. 4 of reply, wherein the respondent denies the existence of the MOU, stating that, *"it is submitted that the complainant in the present complaint has relied upon*

- a document styled as 'memorandum of understanding' stated to be executed between the respondent and the complainant to claim reliefs from this Hon'ble Authority. It is pertinent to mention herein that no such document/MOU was ever executed between the respondent and the complainant. The said document attached as Annexure C2 by the complainant is a forge, fabricated and a bogus document and the same cannot be relied upon by the complainant."* On one hand, the respondent completely denies the existence of the document of MOU, yet on the other hand, respondent in Para C of his reply also assumes that if the MOU is considered valid, then it is merely a document to enter into an agreement and cannot be equated with a proper agreement under the RERA Act, 2016. This implies a contradiction in the respondent's statements across different paragraphs of his reply. Once it is stated that the document is forged, there should be no need for further explanation. He further states that receipt of ₹25,00,000/- is already on record, wherein, unit details is also mentioned. Once the money is received from the allottee exceeding 10% of the total sale consideration, the promoter is required to enter into an agreement with the allottee. If the allottee decides to withdraw from the project, they are entitled to a refund of the amount paid.
13. Furthermore, Id. Counsel for complainants refers to their rejoinder filed in the registry on 20.07.2023, wherein it is mentioned that during the pendency of



this complaint, respondent mortgaged the entire project, including the units allotted to the complainants, to L&T Finance Ltd. The complainants became aware of this fact when a public notice was issued by L&T Finance Ltd. However, the respondent concealed this fact in their reply.

14. On the other hand, Ld. Counsel for respondent started his argument by challenging the maintainability of the case, questioning whether the Hon'ble Authority has jurisdiction to adjudicate the reliefs sought by the complainant based on the documents attached by them.
15. Learned counsel for respondent referred to complaint no. 300 of 2022 titled as "Rajesh Gupta versus RPS Infrastructure Ltd.", he submitted that complainant in present matter is Mr. Rajesh Gupta. However, the MOU attached by them as "Annexure C-2" at page no. 20 of the complaint book to substantiate their pleadings is between RPS Infrastructure Ltd. and Ms. Divija Gupta. Similarly, in all other complaints except complaint no. 271 of 2022, 272 of 2022, and 273 of 2022, which are by allottee Divija Gupta, the complainants are attaching the MOU of a third party to support their claims. With respect to complaints from serial no. 4 to 51 there is no locus standi, no ground for the complainant to rely upon the terms of the MOU to seek the relief that they are seeking in their complaint. It is a settled law by Hon'ble Gauhati High Court in the case of "*Dilip Deka versus State of Assam*" that petitioners who are

strangers to the agreement dated 27.10.005 have no locus standi to file writ petitions... ..they have not filed any writ petition but it is the petitioners who on the basis of the agreement with the stated has project themselves to be the persons aggrieved- it is totally misconceived- petitioners having had no locus standi to file writ petitions, they are not entitled to any relief."He requested the Authority to dismiss the complaints from serial no. 4 to 51 of the ground of lack of locus standi. Furthermore, he referred to page no. 23 of the complaint book, highlighting prerequisites that the complainants were supposed to follow, including the requirement that only the allottee can communicate his decision to surrender the unit under option 2 above with a written request, three months prior to the end of 50 months period. It is pertinent to mention here that the word allottee herein plays a lot of significance as only allottee can make a request of surrender of a unit. Secondly, when does this 50 months period expire? MOU was executed on 27.10.2014; the reliance has been placed by complainants on page no. 27 of the complainant book i.e, email written on 10.09.2018 by Mr. Nitin Gupta who had no legal right to make such a request as only the allottee can give a request of surrender of the unit. Moreover, the email is dated 10.09.2018 which is beyond the expired period, if it is agreed that there was an MOU in question.



16. He further stated that a basic requirement in a builder-buyer relationship includes a booking application form, agreement, payment demands, reminders etc. He argued that if a person is a bona fide allottee, they would have at least inquired about the construction status of the project, yet no such document has been provided by the complainants to date.
17. Furthermore, he contended that the documents styled as receipts are merely security documents for the purpose of repayment of financial investments, advanced. There was no intention to create a builder buyer relationship, they were purely business transactions.
18. After hearing averment of respondent, Authority enquired about the unit details written on the receipts and mention of the word booking amount on the receipt attached in the compliant book. The Authority also questions that these pre-RERA document would qualify as an agreement for sale under the RERA Act. In response, Id. Counsel for respondent stated that after the issuance of the receipt, there was no intention to establish a builder-buyer relationship. He argued that such intentions existed; either party would have attached supporting documents communicating about the stage of construction of the unit. Further, the receipt issued to the complainant was only for the purpose of security and not to enter into any agreement. He further referred to clause 21 of the MOU on page no. 25 of the complaint

book. The Authority clarified that the RERA act, 2016 doesn't distinguish between the investors and the consumer. The respondent's counsel acknowledged that a receipt could be considered an agreement but emphasized that it must be supplemented by other documents, which the complainants have failed to provide.

19. Authority further clarifies that the security documents are the documents which secures the amount that the person has paid, in case the other person do not return the amount then, the person in possession of that security document can use the document to get his money back.
20. Secondly, Id. Counsel for respondent drew the attention of the Authority to the reliefs sought by the complainants. The complainants are seeking payment of fixed resale consideration amounting to ₹50 lacs, as agreed vide clause 6 of the MOU dated 23.08.2014, i.e., (upon completion of 50 months from the date of MOU), as option 2 was submitted by the complainant along with interest. They are trying to seek the relief of specific performance of the contract, relying on an MOU that does not pertain to the complainant. Further, as per section 31 of the RERA Act, 2016, any person who is aggrieved by the violation of any of the provisions of RERA Act can seek relief as per RERA Act. However, in entire pleadings of the complainants, there is not even a mention of single provision of RERA Act that respondent has violated.



Furthermore, as per section 18 of RERA Act, there are two conditions to obtain a refund of the paid amount, firstly, if respondent is unable to deliver possession of the project. Secondly, if the respondent abandons the project. None of these grounds are mentioned in the complaints and complainants are not even seeking a refund from the Authority but specific performance. Therefore, the reliefs sought by the complainants are not maintainable.

21. Furthermore, he stated that proceedings before the RERA Authority are summary in nature, meaning that the court must determine/adjudicate the contentions of both parties based on "*undisputed documents/evidence*". This principle has been held by the Hon'ble Supreme Court of India in the Newtech judgment. Even rules 28 and 29 of Haryana RERA Rules, specifically mention the term "summary procedure". However, in complaints from serial no. 4 to 51, learned counsel for the respondent has disputed the very essence of the documentary evidence presented by the complainants. When the documentary evidence is disputed in nature, it doesn't fall under the ambit of summary proceedings. The MOU attached by the complainants in their complaint book is itself a disputed document, as the name of complainant doesn't match with the name of the person with whom the MOU has been executed. Moreover, MOUs are the agreements to enter into an agreement. It is also settled law by the Bombay High Court in the case of



"M/s Heritage Lifestyle and Developers td. Versus M/s Cool Breeze Co-operative Housing Society Limited", wherein it is established that "*.....prima facie said MOU is not a concluded contract- At the most it be said to be an agreement to enter into an agreement subject to various contingences*".

22. The Authority further questioned the learned counsel for the respondent whether the authorized signatory of the respondent realized while signing the MOU that it belonged to a different allottee, and if so, whether the respondent is bound by it now that it has been signed. In response, the learned counsel for the respondent affirmed that the respondent was aware of the document being signed but is not bound to the complainants other than the allottee Divija Gupta, as there is no proper MOU on record proving that an MOU was executed between RPS and the other complainants. Furthermore, the respondent is bound to Divija Gupta as an allottee only if the contents of the MOU were enforced/ exercised as per the terms mentioned therein.
23. Additionally regarding complaints no. 1 to 3 of complainant Ms. Divija Gupta, the MOU in all three complaints was executed between RPS and the complainant Ms. Divija Gupta. It is pertinent to mention that in these cases, the person to whom the document pertains has to sign the document. Even if Ms. Divija Gupta was minor at that time, there is no authorization letter attached in the MOU and it is not even mentioned in the MOU that Ms. Divija



Gupta authorized her father Mr. Nitin Gupta to sign on her behalf. Moreover, the allottee in the complaints is Divija Gupta but the email regarding surrender was written by her father Mr. Nitin Gupta indicating that even the right was exercised by him. He further refers to page no. 28, Annexure C-4, bank statement reflecting the payment of ₹25 lacs on 27.10.2014 in complaint no. 271 of 2022 even the said document was issued by some other person namely, Mr. Rajesh Gupta.

24. Lastly, the captioned complaints are liable to be dismissed as the complainants were required to approach the Authority within three years from the cause of action. However, all the complaints were filed after the lapse of this three-year period. Therefore, all the complaints are liable to be dismissed on the ground of limitation as well.
25. Ld. Counsel for complainants rebutted this by stating that w.r.t. complaints from serial no. 4 to 51, it is explicitly mentioned in para 6 of their complaint book that *"copy of memorandum of understanding after signing was kept by respondent company with assurance to return to complainant. However, till date, executed copy of MOU has not been provided. In any case, in an identical case of family member of complainant namely "Divija Gupta, same was provided."* Since, there was no objection in the reply related to this point;



it was not raised during arguments. The complainants have not concealed any information from the Authority.

26. In captioned complaints, receipts containing unit details of the complainants are annexed in each complaint, which also have been admitted by the respondent himself. Therefore, the objection raised by the learned counsel for the respondent that these complainants are not allottees would not be justified.
27. Furthermore, the arguments presented by the Id. Counsel for respondent regarding the terms of the MOU cannot be considered, as the respondent is completely denying the execution of the MOU. Therefore, he cannot rely on the terms and conditions of the MOU to support his pleadings.
28. Moreover, the clause 23 says that "Allottee will have to communicate his decision to surrender the unit under option 2 above with a written request, three months prior to the end of 50 months period." The MOU is dated 27.10.2014 and 50 months from the date of execution of MOU would be 27.12.2018 and 3 months prior to 50 months would be 27.09.2018. The complainants sent an email to the respondent regarding surrender of the unit on 10.09.2018, which is well within the prescribed time. In addition to the email, the complainants also sent a letter dated 20.11.2018 to the respondent requesting the refund of resale consideration amount. To claim, that this letter and the email is sent by someone who is not an allottee again contradict their



position. As they need to take a stand that whether complainant comes under the definition of allottee or not. The respondent needs to clarify, whether the complainant falls under the definition of an allottee or not. If the complainant is indeed an allottee, the issue of maintainability becomes irrelevant. Furthermore, even if that was the case, the respondent was obligated to at least respond to the email sent by complainant on 10.09.2018. No response was received from the respondent.

29. Further, with regard to the limitation period, present complaint is filed in the year 2022. Firstly, it constitutes a continuous cause of action. Moreover, based on a suo moto judgment by the Supreme Court, the COVID period of two years must be excluded from 15.03.2020 to 28.02.2022, plus an additional 90-day grace period. Therefore, these complaints fall within that ambit. Additionally, RERA is a special act; it is not governed by the usual limitation period.
30. After hearing, averments of both the parties, Authority is of the view that Id. counsel for respondent has verbally challenged the maintainability of the captioned complaints. Therefore, an opportunity is being granted to the Id. counsel for respondent to submit relevant documents proving that these complaints are not maintainable before the Authority, atleast two weeks before the next date of hearing in the registry, failing which the complaints



will be decided on merits on next date of hearing with all the documents available on the record.

31. Cases are adjourned to 07.11.2024.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S SACHDEV
[CHAIRMAN]