

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

Complaint no. : 1823 of 2018
First date of hearing: 19.03.2019
Date of decision : 19.03.2019

1. Mr. Sumer Singh Tokas
2. Mr. Niraj Tokas
R/o. 204, Munirka Village, Near Baba
Gang Nath Chowk, P.O JNU, New Delhi

Complainants

Versus

M/s Ramprashtha Promoters and Developers
Pvt. Ltd.
Office at: 114, Sector-44,
Pataudi Road, Gurugram
Registered office: C-10, C-block market, Vasant
Vihar, New Delhi - 110057

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE

Shri Rahul Yadav
Shri Dheeraj Kapoor
Shri Shobhit Maheshwari

Advocate for the complainant
Advocate for the respondent
Authorized representative on
behalf of respondent company

ORDER

1. A complaint dated 26.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) rules, 2017 by the complainants Mr. Sumer Singh Tokas and Mr. Niraj Tokas, against the promoter M/s Ramprashtha Promoters and Developers Pvt. Ltd. on account of violation of clause 15(a) of apartment buyer's agreement dated 15.10.2010 in respect of apartment/unit described below in the project 'The Edge Tower', for not handing over possession by the due date which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 15.10.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"The Edge Tower", Sector 37-D, Gurugram
2.	Apartment/unit no.	G-1301, 13 th floor
3.	Apartment measuring	1470 sq. ft'
4.	RERA registered/ not registered.	Registered
5.	RERA registration no.	279 of 2017
6.	Date of completion as per registration certificate	31.12.2018
7.	DTCP license no.	33 of 2008 dated





		19.02.2008
8.	Nature of real estate project	Group housing colony
9.	Date of execution of apartment buyer's agreement	15.10.2010
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per applicant file dated 07.01.2019	Rs. 54,59,405/-
12.	Amount paid by the complainant as per applicant file dated 07.01.2019	Rs. 49,43,959/- (page 42 of reply)
13.	Due date of delivery of possession as per clause 15(a) of flat buyer's agreement (respondent proposed to handover possession by 31.08.2012 + 120 days grace period for applying and obtaining occupation certificate)	31.12.2012
14.	Delay in handing over possession till date of decision	6 years 2 months 19 days
15.	Penalty clause as per flat buyer's agreement	Clause 17(a) of the agreement i.e. Rs.5/- per sq. ft of the super area per month till date of grant of possession to the allottee.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 31.12.2012. Neither the respondent has delivered the possession of the said unit till 31.12.2012 to the purchaser nor they have paid any compensation @ Rs.5/- per





sq. ft' of the super area per month for the period of delay as per clause 17(a) of flat buyer's agreement dated 15.10.2010. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. the respondent through its counsel appeared on 19.03.2019. the case came up for hearing on 19.03.2019. the reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainants booked a residential flat in the project being developed by the respondent namely "The Edge Tower" at Sector-37-D, Gurugram in Gadoli Kalan Village, Gurugram.
7. The representatives of respondent represented to the complainants that they are developing the above project through its 100% subsidiaries i.e. M/s A Infratech Pvt Ltd. The complainants was induced to book the above apartment by showing brochures and various advertisement materials depicting that the project will be developed as a state-of-art project and shall be one of its kind. It was further stated that the project is a premium high-end multi-storey project being developed with the assistance of internationally renowned



architects. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

8. The complainants submitted that respondent/ promoter has a team of marketing experts to lure the customers and induce them to purchase apartments/ units in its project by resorting to deceit and fraudulent representations and giving false hopes of owning one's own flats and accordingly after being influenced by the rosy picture put forth by the representatives of the respondent/promoter, the complainants got booked a apartment/unit with the respondent. The complainants made the first payment of Rs. 5,00,870/- and Rs. 2,94,050/- on 16.09.2010 i.e prior to issuance of the allotment letter dated 01.10.2010.
9. The complainants were further induced to sign a pre-printed apartment buyer's agreement dated 15.10.2010 by virtue of which the respondent allotted a unit bearing no. G-1301 on 13th floor in tower no. G, having super area of 1470 sq. ft' to the complainants. The said agreement is totally one sided which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent.



10. The complainants have already paid a total sum of Rs. 47,89,585/- towards the aforesaid residential apartment in the project as and when demand was raised by the respondent. The balance payment was to be made at the time of offering of possession in terms of the apartment buyer's agreement.
11. In terms of the apartment buyer's agreement, the respondent was to complete the project within a period of 42 months from the date of approval of building plans with a further grace period of six months till date the construction is not complete, which is resulting in extreme kind of mental distress, pain and agony to the complainants.
12. The complainants have taken loan from HDFC Bank for purchasing the unit in question and is paying the regular instalments of the same and due to the delay in delivery of possession by the respondent, the complainants are burdened to pay the instalments from their pockets as the date of delivery have expired way long back and the construction of the project has still not been completed.
13. The complainants have made regular visits at the project site and observed that there are serious qualities issues with respect to the construction carried out by respondent till





now. The units were sold by representing that the same will be luxurious apartment however; all such representations seem to have been made in order to lure complainants to purchase the flats at extremely high prices. The respondent has compromised with levels of quality and is guilty of mis-selling. There are various deviations from the initial representations. The respondent marketed luxury high end apartments, but, they have compromised even with the basic features, designs and quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low grade defective and despicable construction quality.

14. The respondent has not acknowledged the requests of the complainants in regard to the status of the project. The agreement was executed on 15.10.2010 and accordingly the project was to be completed in 42 months with grace period of six months. The respondent have committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The complainants are entitled for refund of its entire amount paid





to the respondent along with interest as well as compensation/ penalty.

15. Issues raised by the complainants are as follow:

- i. Whether the respondent/ promoter made false representations about the project in question in order to induce the complainants to make a booking?
- ii. Whether the respondent/ promoter is liable for unjustifiable delay in construction and development of the project in question?
- iii. Whether the respondent/ promoter is liable to refund the amount deposited by the complainants along with interest at the prescribed rate?

16. Relief sought

The complainants are seeking the following reliefs:

- i. Direct the respondent to refund a sum of Rs. 47,89,585/- along with interest at the prescribed rate from the date when payments were made till realization of the amount in full;
- ii. Pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.



Respondent's reply

17. At the very outset, it is most respectfully submitted that the complaint filed by the complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
18. The respondent submitted that complaint for compensation and interest under section 12, 14, 18 and 19 of the Act is maintainable only before the adjudicating officer. The complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble regulatory authority under rule-28.
19. The respondent submitted that the complaint pertains to the alleged delay in delivery of possession for which the





complainants have filed the present complaint under rule-28 of the said rules and is seeking the relief of refund, interest and compensation under section 18 of the said Act. Therefore, even though the project of the respondent i.e. "THE EDGE TOWERS" Ramprastha City, Sector-37D, Gurgaon is covered under the definition of "ongoing projects" and registered with this hon'ble regulatory authority. The complaint, if any, is still required to be filed before the adjudicating officer under rule-29 of the said rules and not before this hon'ble regulatory authority under rule-28 as this hon'ble regulatory authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

20. Without prejudice to the above, the above stated position is further substantiated by the proviso to section 71 which clearly states that even in a case where a complaint is withdrawn from a consumer forum/commission/NCDRC for the purpose of filing an application under the said Act and said rules. The application, if any, can only be filed before the adjudicating officer and not before the regulatory authority.

21. It is also submitted that the complaint is signed by only one of the complainants i.e. Sumer Singh Tokas and not by both the complainants and even the affidavit that has been filed is not





attested. In the absence of signatures of both the complainants on the complaint and also in the absence of a properly verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.

22. Without prejudice to the above, it is stated that the statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not consumers and nowhere in the present complaint have the complainants pleaded as to how the complainants are consumers as defined in the Consumer Protection Act, 1986 qua the respondent. The complainants have deliberately not pleaded the purpose for which the complainants have entered into an agreement with the respondent to purchase the apartment in question. The complainants, are already the owner and resident of 204, Munirka Village, Near Baba Gang Nath Chowk, P.O. JNU, Delhi-110067 (address mentioned in the booking application form,



apartment buyer agreement and in the present complaint) are investors, who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds. It is most respectfully submitted that this hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainants have not come to this hon'ble regulatory authority with clean hands and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose and the complainants not being 'consumers' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the said Act. This has been the consistent view of the hon'ble National Consumer Disputes Redressal Commission. It is clear from the above that the complainants are investors.



23. It is pertinent to mention here that from the date of booking till the filing of the present complaint, the complainants have never ever raised any issue whatsoever and have now concocted a false story and raised false and frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainants clearly

indicates that the complainants are mere speculators having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainants have filed the present complaint on false, frivolous and concocted grounds.

24. Despite several adversities, the respondent has continued with the construction of the project and are in the process of completing the construction of the project and have already obtained the OC of 5 towers out of 15 towers and should be able to apply the occupation certificate for the apartment in question by 31.12.2019 (as mentioned at the time of application for extension of registration of the project with RERA). However, as the complainants were only short term and speculative investors, therefore they were not interested in taking over the possession of the said apartment. It is apparent that the complainants had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession and because of slump in the real estate market, the complainants have developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted and frivolous



litigation. The alleged grievance of the complainants has origin and motive in sluggish real estate market.

25. It is submitted that this hon'ble regulatory authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainants/allotment offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said rules, has been executed between the complainants and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 15.10.2010, executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement. This submission of the respondent no.1 inter alia, finds support from reading of the provisions of the said Act and the said rules. Thus, in view of the submissions made above, no relief can be granted to the complainants.



26. The respondent submitted that no cause of action has ever accrued in favour of the complainants to file the present complaint before this hon'ble regulatory authority. The complaint being without any cause of action is liable to be dismissed at this ground alone.
27. The respondent has made huge investments in obtaining approvals and carrying on the construction and development of 'THE EDGE TOWERS' project and despite several adversities in the process of completing the construction of the project, they have already obtained the OC of 5 towers out of 15 towers and should be able to apply the occupation certificate for the apartment in question by 31.12.2019 (as mentioned at the time of application for extension of registration of the project with RERA). The complainants persuaded the respondent to allot the said apartment in question to them with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered



huge financial losses on account of breach of contract by the complainants.

28. The fact that (a) till date, the complainants kept on making payment as per the payment plan; and (b) that from the date of booking till the filing of the present complaint, the complainants never raised any issue whatsoever, clearly reveals that the complainants had no issue or concern about the said apartment/agreement and terms and conditions of the said apartment buyer's agreement and are now unnecessarily raising false and frivolous issues and has filed the present complaint.

Determination of Issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

29. With respect to the **first issue**, the complainants have made assertion without substantiating the same in material particulars.
30. With respect to the **second and third issues**, the authority came across that as per clause 15(a) of apartment buyer's



agreement. The clause regarding the possession of the said unit is reproduced below:

"15(a) Possession

"possession to be handed over by 31.08.2012 + 120 days grace period for applying and obtaining occupation certificate."

The grace period of 120 days has been allowed to the respondent for the delay caused due to exigencies beyond control of the respondent. Accordingly, the due date of possession was 31.12.2012 and the possession has been delayed by 6 years 2 months 19 days till date of decision. The respondent has attached registration certificate, in which the respondent has committed to complete the project by 31.12.2018.

As the possession of the flat was to be delivered by 31.12.2012 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

32. The respondent is directed to pay interest at prescribed rate of interest i.e. 10.75% per annum w.e.f 1.1.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.



Findings by the authority

34. The project 'The Edge Tower' is located in Sector 37-D, Gurugram, thus the authority has territorial jurisdiction to entertain this complaint.
35. **Jurisdiction of the authority-** The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
36. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligations.
37. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainant regarding compensation becomes superfluous.



38. Complainant booked a unit no. G-1301, 13th floor, in the project 'The Edge Tower, Sector 37 D, Gurugram. As per clause 15(a) of the builder buyer agreement dated 15.10.2010, possession was to be handed over by 31.8.2012 plus six months grace period which comes out to be 31.12.2012. The complainant has paid Rs.47,89,585/- against total sale consideration of Rs.54,59,405/-. It is a construction linked plan. The counsel of the respondent has also stated that an amount of Rs.6,40,435/- has been paid towards the pre EMI which may be adjusted.

39. In this situation the buyer is not eligible for refund in the interest of the builder as well as well buyer.

Decision and directions of the authority

40. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The project is registered with the authority which was valid upto 31.12.2018 and the counsel for the respondent stated at bar that they have applied for



extension upto 31.12.2019. Therefore, the respondent is directed to handover the possession by 31.12.2019.

- (ii) The respondent is directed to pay interest at prescribed rate of interest i.e. 10.75% per annum w.e.f 1.1.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development)

Act, 2016 till offer of possession *(after adjustment of pre-EMI amount of Rs. 6,40,435/- which is already paid by the respondent.)*

(iii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

41. Complaint stands disposed of.
42. The order is pronounced.
43. Case file be consigned to the registry.




(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.03.2019

Corrected vide order dated 27/05/19.

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APPEARANCE

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1. A complaint dated 26.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) rules, 2017 by the complainants Mr. Sumer Singh Tokas and Mr. Niraj Tokas, against the promoter M/s Ramprashtha Promoters and Developers Pvt. Ltd. on account of violation of clause 15(a) of apartment buyer's agreement dated 15.10.2010 in respect of apartment/unit described below in the project 'The Edge Tower', for not handing over possession by the due date which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 15.10.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"The Edge Tower", Sector 37-D, Gurugram
2.	Apartment/unit no.	G-1301, 13 th floor
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4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 31.12.2012. Neither the respondent has delivered the possession of the said unit till 31.12.2012 to the purchaser nor they have paid any compensation @ Rs.5/- per



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Facts of the complaint

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architects. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

8. The complainants submitted that respondent/ promoter has a team of marketing experts to lure the customers and induce them to purchase apartments/ units in its project by resorting to deceit and fraudulent representations and giving false hopes of owning one's own flats and accordingly after being influenced by the rosy picture put forth by the representatives of the respondent/promoter, the complainants got booked a apartment/unit with the respondent. The complainants made the first payment of Rs. 5,00,870/- and Rs. 2,94,050/- on 16.09.2010 i.e prior to issuance of the allotment letter dated 01.10.2010.
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10. The complainants have already paid a total sum of Rs. 47,89,585/- towards the aforesaid residential apartment in the project as and when demand was raised by the respondent. The balance payment was to be made at the time of offering of possession in terms of the apartment buyer's agreement.
11. In terms of the apartment buyer's agreement, the respondent was to complete the project within a period of 42 months from the date of approval of building plans with a further grace period of six months till date the construction is not complete, which is resulting in extreme kind of mental distress, pain and agony to the complainants.
12. The complainants have taken loan from HDFC Bank for purchasing the unit in question and is paying the regular instalments of the same and due to the delay in delivery of possession by the respondent, the complainants are burdened to pay the instalments from their pockets as the date of delivery have expired way long back and the construction of the project has still not been completed.
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to the respondent along with interest as well as compensation/ penalty.

15. Issues raised by the complainants are as follow:

- i. Whether the respondent/ promoter made false representations about the project in question in order to induce the complainants to make a booking?
- ii. Whether the respondent/ promoter is liable for unjustifiable delay in construction and development of the project in question?
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The complainants are seeking the following reliefs:

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Respondent's reply

17. At the very outset, it is most respectfully submitted that the complaint filed by the complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
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21. It is also submitted that the complaint is signed by only one of the complainants i.e. Sumer Singh Tokas and not by both the complainants and even the affidavit that has been filed is not



attested. In the absence of signatures of both the complainants on the complaint and also in the absence of a properly verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.

22. Without prejudice to the above, it is stated that the statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not consumers and nowhere in the present complaint have the complainants pleaded as to how the complainants are consumers as defined in the Consumer Protection Act, 1986 qua the respondent. The complainants have deliberately not pleaded the purpose for which the complainants have entered into an agreement with the respondent to purchase the apartment in question. The complainants, are already the owner and resident of 204, Munirka Village, Near Baba Gang Nath Chowk, P.O. JNU, Delhi-110067 (address mentioned in the booking application form,



apartment buyer agreement and in the present complaint) are investors, who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds. It is most respectfully submitted that this hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainants have not come to this hon'ble regulatory authority with clean hands and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose and the complainants not being 'consumers' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the said Act. This has been the consistent view of the hon'ble National Consumer Disputes Redressal Commission. It is clear from the above that the complainants are investors.



23. It is pertinent to mention here that from the date of booking till the filing of the present complaint, the complainants have never ever raised any issue whatsoever and have now concocted a false story and raised false and frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainants clearly

indicates that the complainants are mere speculators having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainants have filed the present complaint on false, frivolous and concocted grounds.

24. Despite several adversities, the respondent has continued with the construction of the project and are in the process of completing the construction of the project and have already obtained the OC of 5 towers out of 15 towers and should be able to apply the occupation certificate for the apartment in question by 31.12.2019 (as mentioned at the time of application for extension of registration of the project with RERA). However, as the complainants were only short term and speculative investors, therefore they were not interested in taking over the possession of the said apartment. It is apparent that the complainants had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession and because of slump in the real estate market, the complainants have developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted and frivolous



litigation. The alleged grievance of the complainants has origin and motive in sluggish real estate market.

25. It is submitted that this hon'ble regulatory authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainants/allotment offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said rules, has been executed between the complainants and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 15.10.2010, executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement. This submission of the respondent no.1 inter alia, finds support from reading of the provisions of the said Act and the said rules. Thus, in view of the submissions made above, no relief can be granted to the complainants.



26. The respondent submitted that no cause of action has ever accrued in favour of the complainants to file the present complaint before this hon'ble regulatory authority. The complaint being without any cause of action is liable to be dismissed at this ground alone.

27. The respondent has made huge investments in obtaining approvals and carrying on the construction and development of 'THE EDGE TOWERS' project and despite several adversities in the process of completing the construction of the project, they have already obtained the OC of 5 towers out of 15 towers and should be able to apply the occupation certificate for the apartment in question by 31.12.2019 (as mentioned at the time of application for extension of registration of the project with RERA). The complainants persuaded the respondent to allot the said apartment in question to them with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered



huge financial losses on account of breach of contract by the complainants.

28. The fact that (a) till date, the complainants kept on making payment as per the payment plan; and (b) that from the date of booking till the filing of the present complaint, the complainants never raised any issue whatsoever, clearly reveals that the complainants had no issue or concern about the said apartment/agreement and terms and conditions of the said apartment buyer's agreement and are now unnecessarily raising false and frivolous issues and has filed the present complaint.

Determination of Issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

29. With respect to the **first issue**, the complainants have made assertion without substantiating the same in material particulars.
30. With respect to the **second and third issues**, the authority came across that as per clause 15(a) of apartment buyer's



agreement. The clause regarding the possession of the said unit is reproduced below:

“15(a) Possession

“possession to be handed over by 31.08.2012 + 120 days grace period for applying and obtaining occupation certificate.”

The grace period of 120 days has been allowed to the respondent for the delay caused due to exigencies beyond control of the respondent. Accordingly, the due date of possession was 31.12.2012 and the possession has been delayed by 6 years 2 months 19 days till date of decision. The respondent has attached registration certificate, in which the respondent has committed to complete the project by 31.12.2018.

As the possession of the flat was to be delivered by 31.12.2012 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

32. The respondent is directed to pay interest at prescribed rate of interest i.e. 10.75% per annum w.e.f 1.1.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.



Findings by the authority

34. The project 'The Edge Tower' is located in Sector 37-D, Gurugram, thus the authority has territorial jurisdiction to entertain this complaint.
35. **Jurisdiction of the authority-** The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
36. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligations.
37. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainant regarding compensation becomes superfluous.



38. Complainant booked a unit no. G-1301,13th floor, in the project 'The Edge Tower, Sector 37 D, Gurugram. As per clause 15(a) of the builder buyer agreement dated 15.10.2010, possession was to be handed over by 31.8.2012 plus six months grace period which comes out to be 31.12.2012. The complainant has paid Rs.47,89,585/- against total sale consideration of Rs.54,59,405/-. It is a construction linked plan. The counsel of the respondent has also stated that an amount of Rs.6,40,435/- has been paid towards the pre EMI which may be adjusted .

39. In this situation the buyer is not eligible for refund in the interest of the builder as well as well buyer.

Decision and directions of the authority

40. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The project is registered with the authority which was valid upto 31.12.2018 and the counsel for the respondent stated at bar that they have applied for



extension upto 31.12.2019. Therefore, the respondent is directed to handover the possession by 31.12.2019.

- (ii) The respondent is directed to pay interest at prescribed rate of interest i.e. 10.75% per annum w.e.f 1.1.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
- (iii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

41. Complaint stands disposed of.
42. The order is pronounced.
43. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.03.2019

Judgement uploaded on 12.04.2019