

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

Complaint no. : 3218 of 2021
First date of hearing: 19.10.2021
Date of decision : 14.09.2022

Tarun Nanda
R/o: - BE- 31, Shallmar Bagh, Delhi- 110088

Complainant

Versus

1. M/s Ramprashtha Promoters and Developers
Private Limited.
2. Arvind Walia
3. Balwant Chaudhary
4. Sandeep Yadav
Directors of the M/s Ramprashtha Promoters and
Developers Private Limited
All Having Regd. Office At: - Plot No. 114, Sector-44,
Gurugram-122002

Respondents

CORAM:

Shri K.K. Khandelwal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Ms. Manasvi (Advocate)
None

Complainant
Respondent

ORDER

1. The present complaint dated 11.08.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the

Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Primera", Sector 37D, Village Gadauli Kalan, Gurugram
2.	Project area	13.156 acres
3.	Registered area	3.257 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	12 of 2009 dated 21.05.2009 valid upto 20.05.2024
6.	Name of licensee	Ramprastha realtor Pvt. Ltd.
7.	Date of approval of building plans	25.04.2013 [As per information obtained by planning branch]



8.	Date of environment clearances	12.03.2021 [As per information obtained by planning branch]
9.	RERA registered/ not registered	Registered vide no. 21 of 2018 dated 23.10.2018
10.	RERA registration valid up to	31.03.2020
11.	Unit no.	B-1502, 15 th floor, tower/block-B (Page no. 37 of the complaint)
12.	Unit area admeasuring	1720 sq. ft. (Page no. 37 of the complaint)
13.	Date of booking application form	04.07.2013 (Page no, 30 of the complaint)
14.	Allotment letter	20.09.2013 (Page no. 90 of the complaint)
15.	Date of execution of apartment agreement by buyer	06.11.2013 (Page no. 33 of the complaint)
16.	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



		<p>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 shall endeavour to complete the construction of the said <i>Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP. 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) (Page no. 47 of the complaint)</p>
17.	Grace period	The promoter has proposed to hand over the possession of the apartment within a period of 54 months from the date of approval of buildings plans i.e., 25.04.2013



		<p>and further provided in agreement that promoter shall be entitled to a grace period of 120 days 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.</p>
18.	Due date of possession	25.10.2017 [Note: - the due date of possession can be calculated by the 54 months from approval of building plans i.e., 25.04.2013]
19.	Total sale consideration	Rs.1,04,06,632/- (As per schedule of payment page no. 60 of the complaint)
20.	Amount paid by the complainant	Rs.40,21,881/- (As per receipt information page no. 44 of the reply)

21.	Payment plan	Construction linked payment plan [Page no. 60 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 filing complaint i.e., 11.08.2021	3 years 9 months and 17 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

1. The complainant was approached by the channel partner of the respondent company in the year 2012 wherein it portrayed respondent to be an outstanding developer having good name, fame and reputation in the said arena of trade wherein they are *inter-alia* developing residential flats with utmost quality commitment keeping in regard the factor of customer satisfaction being a top notch priority and as such by way of flowery promises, started inducing the complainant to buy a flat in their then upcoming residential project namely "Primera" situated Sector 37D, Gurugram Manesar Urban Complex, Gurugram, Haryana, India.



- II. That pursuant to the flowery proposals and promises floated on part of the respondent through its officials, the complainant being induced by the same agreed to purchase a 3 BHK apartment being apartment no. 1502, located on 15th floor in tower/block 'B' having super area of 1720 sq. ft. for a consideration of Rs.1,04,06,632/- while agreeing to the payment plan being construction link plan.
- III. That the said acceptance to the proposal floated on part of the respondent, the complainant was thus made to enter into an agreement by the respondent under the name of "buyer's agreement", which needless to say was a one-sided agreement since there existed a clause of penalty levied upon the respondent at Rs. 5/- per sq. ft. per month of the super area till the actual date of possession. However, the other side of the coin portrayed a strange figure since complainant was under liability to pay charges @ 1.5% per month compounded quarterly in case of non-payment of the dues within the stipulated period. Even contrary to the arbitrary terms and conditions stated in the buyer's agreement, the respondent company has charged interest @18% per annum which ultimately comes out to be even more than 18% as it being compounded quarterly, from the complainant for delay in payment of installments. The said agreement was executed on 06.11.2013 at Gurugram, Haryana.

- IV. That the said agreement enforced by the respondent is being one sided and ultra-virus to the public policy and absolutely against the principles of equity since there existed a reciprocal promise on part of either of the parties wherein a duty was casted upon the complainant to make timely and due payments as would be raised by the respondent failing which the complainant would be liable to pay interest @ 1.5% per month compounded quarterly, however the actual interest charged by the respondents from the complainant is more than @18% per annum as it is being compounded quarterly which is clearly a substantial breach of the buyer's agreement. On the other hand, the respondents were under liability to handover the peaceful possession of the aforementioned unit within 54 months plus a grace period of 120 days thereof i.e., by 06.09.2017, however to the unfortunate fate of the complainant, the respondents failed to discharge the obligation of due and timely delivery of the possession of the aforementioned unit which is even pending possession delivery till date.
- V. That the complainant still being a bonafide purchaser in order to remain faultless with respect to obligations casted upon him of the timely payment and chose to pay the due installments out of his hard-earned money. The complainant namely Smt. Vinay Nanda is a senior citizen and invested her life savings by paying the



installments against consideration amount of the booked flat to ensure due and timely payment.

- VI. That respondent has arbitrarily stated the condition regarding possession of the flat which reads as *"developer shall endeavor to complete the construction of the said apartment within a period of 54 months from the date of approval of building plans by the office of DGTCP. The allottee agrees and understands that the Developer shall be entitled to a group period of hundred and twenty (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."* A catena of judgments has been delivered by the different courts/forums stating such condition to be vague. Even if the irrational time period of 54 months + 120 days is to be computed, the possession of the aforementioned flat was to be handed over to the complainant latest by 06.09.2017. However, despite almost 5 years having been passed since the time limit for the stipulated period having been crossed, the complainant has not been given the fruit of his hard-earned money paid to respondent no. 1 company, in other words, the possession of the said unit is awaited even as on date.
- VII. That the complainant has been constrained to live on rent since being put off from his very right to shelter despite having paid almost the entire sum of money towards the purchase of the said



unit to the respondent builder with respect to purchase of the said unit, was thus constrained to live on rent for which he is under monthly liability of Rs.35,000/-. The complainant as suffered a financial loss of Rs.20,00,000/- till the date of filing of the present complaint with respect to the rental outward paid for the period post September 2017 and related charges i.e. the due time of possession as stipulated in the said agreement.

- VIII. That the respondent company through its/managing director and directors has enjoyed the hard-earned money of the complainant, one of whom is a senior citizen and has invested her life savings in the allotted apartment. The respondents have diverted the amount collected from the homebuyers of the project which was meant to be used only for the construction of the said project which is an offence under provisions of the Act of 2016.
- IX. That as per the current status of project, it is far from completion and the only object of the respondents are to extract more and more money with false hope to complainant of getting their dream home delivered soon however the intention of the respondents have been mala fide right from the beginning and they have no intention whatsoever of handing over the project at least not in near future for sure.
- X. That the complainant being assailed of such delinquency in service



on part of the respondent in complying with the duties so casted upon them, had requested on several occasions to refund the amount deposited against the booked flat along with appropriate interest & compensation however the said requests failed to cut any ice on part of the respondents who have attempted to harass the complainant at large by looting his hard earned money and still making him suffer by compelling to live on rent in another accommodation due to their failures and laches.

- XI. That to the most unfortunate fate of the complainant since he realized that he had been trapped by the respondents who created web of vicious circle by looting people of their hard-earned money as such to the unfortunate fate of the complainant the respondent failed to discharge the obligation of timely delivery of the possession of the aforementioned unit which is even pending delivery till date.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Grant an order for refund of the amount of Rs.40,21,881/- paid by the complainants against the consideration amount of flat No. B-1502 along with interest @18% p.a. as the same interest rate has been charged by the respondents from the complainant for the delay in payment.



- ii. Interest @ 18% p.a. to be also paid pre-reference, pendent-lite and future interest be granted in favor of the complainants and against the respondent.
 - iii. Compensation to the tune of Rs.16,80,000/- as rental expense incurred by the complainant due to not handing over the timely possession of the allotted apartment by the respondents.
 - iv. Compensation to the tune of Rs. 25,00,000/- for mental harassment, agony, and pain of the complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
- I. That the present complaint has been filed by the complainant before this authority for refund along with interest and legal cost against the investment made by the complainant in one of the plots in the futuristic project of the respondent. That in this behalf, it is most respectfully submitted that the present adjudicating officer is precluded from entertaining the present matter due lack of jurisdiction of the adjudicating officer.
 - II. That the complainant has now filed a complaint in terms of the Haryana Real Estate (Regulation & Development) Amendment



Rules, 2019 under the amended rule 28 in the amended 'Form CAO' and is seeking the relief of refund along with interest under section 18 of the Act. That it is most respectfully submitted in this behalf that the power of the appropriate Government to make rules under section 84 of the said Act is only for the purpose of carrying out the provisions of the said Act and not to dilute, nullify or supersede any provision of the said Act.

- III. The power to adjudicate the complaints pertaining to refund and interest for a grievance under Sections 12,14,18 and 19 are vested with the adjudicating authority under Section 71 read with Section 31 of the said Act and not under the said rules and neither the said rules or any amendment thereof can dilute, nullify or supersede the powers of the adjudicating officer vested specifically under the said Act and therefore, the adjudicating officer has no jurisdiction in any manner to adjudicate upon the present complaint.
- IV. That in the present case, the complaint pertains to the alleged delay in delivery of possession for which the Complainant has filed the present complaint and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e. "Rise" (SIC i.e., "Primera") Ramprastha City, Sector-37D, Gurgaon is covered under the definition of "ongoing projects" and registered with the regulatory authority, the complaint, if any, is still required to be filed before the regulatory authority under the amended rule -28

of the said rules and not before adjudicating officer under the amended rule-29 as the adjudicating officer has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

- V. That, without prejudice to the above, now, in terms of the said amendment rules, the complainant has filed the present complaint under the amended rule-29 (but not in the amended 'Form CAO') and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. It is pertinent to mention here that as the present complaint is not in the amended 'Form CAO', therefore the present complaint is required to be rejected on this ground alone.
- VI. That the complainant is not "Consumers" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainant was to make investment in a futuristic project of the respondent only to reap profits at a later stage when there is increase in the value of flat at a future date which was not certain and fixed and neither there was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.
- VII. That it is evident that the complainant has approached the authority by suppressing crucial facts with unclean hands which is evident from its own complaint. Therefore, the present complaint is liable to be rejected in limine based on this ground alone.



VIII. Statement of objects and reasons as well as the preamble of the said Act clearly state that the Act is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. The Act of 2016 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 complainant is investor and not consumer and nowhere in the present complaint have the complainant pleaded as to how the complainant is consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant entered into an agreement with the respondent to purchase the apartment in question. The complainant, who is already an owner of house no.328, Sector 27, Gurugram (address provided at the time of booking application form) is an investor, 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 the Ld. Adjudicating Officer has no jurisdiction howsoever to entertain the present complaint as the complainant have not come to the 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 complainant not being a '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.

- IX. That therefore the complainants cannot be said to be genuine consumers by any standards; rather the complainant is mere investor in the futuristic project of them. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.
- X. That the complainant has not approached this adjudicating authority with clean hands and has concealed the material fact that the complainant is defaulter, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest.
- XI. Even all through these years, the complainant has never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years only hints at the malafide intentions of the complainant. Apparently, the complainant has been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property.
- XII. Objections to the same was to be raised the same should have been done in a time bound manner while exercising time



restrictions very cautiously to not cause prejudice to any other party. The complainant herein cannot now suddenly show up and thoughtlessly file a complaint against them on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainant had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of such a long time at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist them. The entire intention of the complainant is made crystal clear with the present complaint and concretes the status of the complainant as an investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

- XIII. That the respondent had to bear with the losses and extra costs owing due delay of payment of installments on the part of the complainant for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondents constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainant.



- XIV. That the complainant has been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondents into agreeing with the unreasonable demands of the complainant. The reality behind filing such complaint is that the complainant has resorted to such coercive measures due to the downtrend of the real estate market and by way of the present complaint, is only intending to extract the amounts invested along with profits in the form of exaggerated interest rates.
- XV. That further the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the town and country planning department. The complaint is liable to be rejected on the ground that the complainants had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of consumer courts and in further view of the fact the complainant had knowingly made an investment in a future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.
- XVI. That the complainant primary prayer for the refund of the amount paid towards the said unit is entirely based on imaginary and concocted facts by the complainant and the contention that

the opposite party was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated 04.07.2013 was made by the complainant towards a *future potential project* of the respondent company and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainant; hence the complaint does not hold any ground on merits as well.

- XVII. That further the respondent has applied for the mandatory registration of the project with the authority but however the same is still pending approval on the part of the authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act of 2016. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the Act of 2016 for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondents. This by any matter of fact be counted as a default on the part of the respondent.

- XVIII. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainant while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said plot. Hence the complaint is liable to be dismissed on this ground as well.
- XIX. The respondent company is owner of vast tracts of undeveloped land in the revenue estate of Village Basai, Gadauli Kalan and falling within the boundaries of Sectors 37C and 37D Gurugram also known as Ramprastha City, Gurugram.
- XX. That when the complainant had approached the promoter, it was made unequivocally clear to the complainant that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land; and (ii) specific plot with preferred location can be demarcated only when the government releases the zoning plans applicable to the area Village Basai, Gadauli Kalan,



Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainant. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural land of them.

- XXI. That even in such adversities and the unpredicted wrath of falling real estate market conditions, the respondents have made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyers/allottees. That even in such harsh market conditions, the respondents have been continuing with the construction of the project and sooner will be able to complete the construction of the project.
- XXII. The projects in respect of which the respondent has obtained the occupation certificate are described as hereunder: -

S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received
3.	Edge		
	Tower I, J, K, L, M	400	OC received
	Tower H, N	160	OC received
		80	OC received
		640	

	Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G)		OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for



all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the



judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (C), 357*** and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F.1 Objection regarding the complainant being investor.



13. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of Rs.40,21,881/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who



subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

- G. I Grant an order for refund of the amount of Rs.40,21,881/- paid by the complainants against the consideration amount of flat No. B-1502 along with interest @18% P.A as the same interest rate has been charged by the respondents from the complainant for the delay in payment.**
- G. II. Interest @ 18% p.a. to be also paid pre-reference, pendent-lite and future interest be granted in favor of the complainants and against the respondent**
14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of

subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."
(Emphasis supplied)

15. As per clause 15(a) of the apartment buyer's agreement provides for handing over of possession and is reproduced below:

"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 shall endeavour to complete the construction of the said **Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP.** 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."*

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the rate of 18%. However, the allottee intends to withdraw from the project and is



seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules.

Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. 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.
19. 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., 14.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:



"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid."*

21. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 15(a) of the apartment buyer's agreement executed between the parties on 06.11.2013, the possession of the subject unit was to be delivered within a period of 54 months from the date of approvals of building plans i.e., 25.04.2013 which comes out to be 25.10.2017. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over of possession is 25.10.2017.
22. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is 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.

23. The due date of possession as per agreement for sale as mentioned in the table above is 25.10.2017 and there is delay of 3 years 9 months and 17 days on the date of filing of the complaint.
24. 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....."

25. Further, 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. observed as under: -



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."*
26. 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 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.
27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the



entire amount paid by him at the prescribed rate of interest i.e., @ 10% p.a. (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.*

G.III. Compensation to the tune of Rs.16,80,000 as rental expense incurred by the complainant due to not handing over the timely possession of the allotted apartment by the respondents.

G.IV. Compensation to the tune of Rs. 25,00,000/- for mental harassment, agony, and pain of the complainants.

28. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.



G.V. Set up an inquiry by the committee to be appointed by this authority examining the diversion of funds by the Respondents in respect of the project in question.

29. The above-mentioned relief sought by the complainant was not pressed during the arguments. The authority is of the view that the complainant does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

H. Directions of the authority

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents/promoters are directed to refund the amount i.e., Rs.40,21,881/- received by it from the complainant along with interest at the rate of 10% p.a. 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 deposited amount.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondents/promoters are directed not to create third party right against the unit before full realization of the amount paid by




the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.

31. Complaint stands disposed of.
32. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Dr. KK Khandelwal
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022