

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

Complaint no. : 196 of 2022  
First date of hearing: 15.02.2022  
Date of decision : 13.01.2023

1. Mrs. Satya Wanti  
2. Mr. Deepak Gulia  
Both RR/o: - 1610/17(A), Vijay Nagar, Rohtak,  
Haryana- 124001

**Complainants**

Versus

1. M/s Ramprashtha Promoters and Developers Private  
Limited.  
2. M/s Bluebell Proptech Private Limited  
**Both having Regd. Office at:** Plot No. 114, Sector-44,  
Gurugram-122002  
**Also, at:** - C-10, C Block, Market, Vasant Vihar, New  
Delhi- 110057

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Sanjeev Kumar Arora

Member  
Member

**APPEARANCE:**

Sh. Harshit Batra (Advocate)  
Ms. Gayatri Mansa and Shri Navneet Kumar (Advocates)

Complainants  
Respondents

**ORDER**

1. The present complaint dated 21.01.2022 has been filed by the complainant/allottees 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

- The particulars of unit details, sale consideration, the amount paid by the complainants, 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	"SKYZ", Sector 37C, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	102000 sq. mt.
4.	Nature of the project	Group housing complex
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]

8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]	
9.	RERA Registered/ not registered	<b>Registered vide no. 320 of 2017 dated 17.10.2017</b>	
10.	RERA registration valid up to	31.03.2019	
11.	Extension applied on	17.06.2020	
12.	Extension certificate no.	<b>Date</b>	<b>Validity</b>
		In principal approval on 12.06.2019	30.03.2020
13.	Unit no.	303, 3 <sup>rd</sup> floor, tower/block- D (Page no. 21 of the complaint)	
14.	Unit area admeasuring	1750 sq. ft. (Page no. 21 of the complaint)	
15.	Date of execution of tripartite agreement	24.09.2012 (Page no. 73 of the complaint)	
16.	Date of execution of apartment buyer agreement	05.12.2011 (Page no. 16 of the complaint)	
17.	Possession clause	<b>15. POSSESSION</b> <b>(a) Time of handing over the Possession</b>	



		<p>Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over <i>the possession of the Apartment by 31.08.2014 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p> <p><b>(Emphasis supplied)</b> (Page no. 31 of the complaint)</p>
18.	Grace Period	<p><b>Not utilized</b></p> <p>The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in</p>



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

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- I. That relying on the representations, warranties and assurances of the respondent about the timely delivery of possession, the complainants booked an apartment no. 303, on 3<sup>rd</sup> floor in tower D admeasuring 1750 sq. ft. super area along with one covered car parking space in the real estate development of the respondent, known under the name and style of "Skyz" at sector 37-D, Gurgaon, Haryana, on 19.01.2011. The said unit was allotted to the complainants and subsequently an apartment buyer agreement was executed on 05.12.2011.
- II. That the project was registered with the authority vide registration no. 320 of 2017 dated 17.10.2017 up to 31.03.2019. That upon the renewal request of the same, the authority in HARERA/GGM/REP/RC/320/2017/EXT/122/2019 has noted that the license and the building plans have also been expired and renewal have not been put in record. The authority noted, "*The reasons given by promoter do not seem to be convincing and also promoter failed to show reasonable circumstances justifying delay in completion of project by declared due date*".
- III. That the agreement declares both the respondents as the developers of the project. However, the registration license for the development of the project has been granted only to the



respondent no. 1 by this authority. That it is unclear if the respondent no. 2 is a recognised developer with the authority or not. Hence, the respondent no. 2 should be made to strict proof to showcase its developing rights and permissions from the authority and other competent authorities.

- IV. That the complainants bought the said unit from the authorized representative of the respondents. The authorized representative, for and on behalf of the respondents, making tall claims in regard to the project and the respondents, lured the complainants into booking a unit in the project of the respondents. That the respondents made false representations, assurances, and warranties with respect to the timely delivery of the said project to the complainants.
- V. That the complainants dream of living in a peaceful possession has been shattered by the respondents in the most unlawful and illegal manner. It is anticipated that the project was launched with an intention to cheat and harm the innocent complainants.
- VI. That the relationship between the parties are contractual in nature and are governed by the agreements executed between the parties. The rights and obligations of the parties flow directly from such agreements. At the outset, it must be noted that the complainants entered into the agreement by virtue of which the respondents were obligated to deliver the possession of the said

unit within time to the complainants. However, the respondents miserably failed to comply with the said obligation which directly flowed from the clause 15(a) of the agreement despite being bound by the terms and conditions of the said agreement.

- VII. That as per the due date of handing over the possession exclusive of the grace period, the respondents were obliged to deliver the possession of the Unit by 31.08.2014. However, they have delayed by 7 years and 4 months in handing over the possession.
- VIII. That the respondents have not yet applied for the occupancy certificate. Moreover, that the respondent no. 1 has always been vague and ambiguous in updating about the status of development in the project as is evident from the email dated 18.01.2016 in which it had made a false promise of completing the project by September 2017. However, it has miserably failed in complying with the same. Furthermore, on 12.02.2019 the respondent no. 1 sent another email making false and fabricated statement, that the pace of construction has increased, and it shall be handing over the apartment shortly. The respondents have miserably failed in fulfilling any of their promises and have not handed over the possession even after more than 7 years.
- IX. That despite of promises of timely delivery of possession, it needs to be categorically noted that the occupancy certificate has not been applied yet for the particular tower D and thus, the delivery



of possession is nowhere near. It is *prima facie* clear that even after more than 7 years and 4 months of passing of the due date, the respondents have miserably failed in completing the project and obtaining the occupation certificate. Hence, it is a grave failure of the respondent's duty and obligations as under Sections 11(4)(a), 11(4)(b) and 11(4)(f). The complainants have made a total payment of Rs.58,73,369/- till date towards the unit as is evident from the calculation sheet dated 10.01.2022, of the total cost of the property of Rs.67,52,713/- as per the schedule of the payment, for a construction linked plan, annexure II of the agreement. Thus, the complainants have timely paid almost 90% of the total cost of the property as and when demanded by the respondents. Despite the payments being made on time by them, the construction of the project is yet not complete. Moreover, the respondents have miserably failed in fulfilling the obligations and offering the possession till date.

- X. That the *malafide* conduct and unlawful activities of the respondents continued to be seen as they kept on making false promises which have consequently led the complainants to go through mental agony and financial distress. Thus, taking advantage of their dominant position and *malafide* intention, they had restored to unfair trade practices by harassing the

complainants by way of delaying the project by diversion of the money from the innocent and gullible buyers.

- XI. That the complainants, in order to obtain their dream house, availed housing loan of Rs.19,30,889/- from India bulls Housing Finance Limited and the total amount financed has already been disbursed as is evident from the account statement from 12.01.2010 to 12.01.2022. In furtherance of sanctioning of the loan, a tripartite agreement was executed on 24.09.2012 between the complainants, respondent, and India bulls Housing Finance Limited. The complainants have been paying interest at the rate of 10.50% per annum for so many years and are facing continuing hardships.
- XII. That the failure of the respondent/promoters to fulfill their obligations, responsibilities as per the agreement dated 05.12.2011 to obtain the occupancy certificate, hand over the possession within the stipulated period and execute the conveyance deed with the complainants. Accordingly, the non-compliance of the mandate contained in Sections 11(4)(a), 11(4)(b) and 11(4)(f) read with Sections 18(1) and 17(1) and 17(2) of the Act 2016 on the part of the respondents is established. As such the complainants are entitled to delayed possession at the prescribed rate of interest @ 9.30% p.a. w.e.f.

31.08.2014 till the handover of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules 2017.

- XIII. That the respondents have utterly failed to fulfil their obligation to deliver the possession of the apartment in time, execute the conveyance deed and adhere to the terms and condition of the agreement which has caused mental agony, harassment, and huge loss to the complainants and hence the present complaint.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):

- I. To direct the respondents to provide the legal offer of possession to the complainants after receipt of occupancy certificate for the concerned tower and to make the same available to the complainants as per section 11(4)(b) of the Act.
  - II. To direct the respondents to provide the prescribed rate of interest on delay in handing over of possession of the apartment on the amount paid by the complainants from the due date of possession as per the buyer's agreement till the actual date of possession of the apartment as per section 18(1) of the Act.
  - III. To execute the conveyance deed as per section 17 and 11(4)(f) of the Act.
5. On the date of hearing, the authority explained to the respondent/promoters 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 at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.
- ii. That the respondent no. 2 i.e., Bluebell Proptech Pvt. Ltd. is only a financier in the project "Skyz" and in order to secure and recover its funding has executed a joint development agreement dated 29.11.2011 with respondent no. 1 which is also referred to in the purchaser's agreement dated 28.11.2011.
- iii. That the respondent no. 2 is neither the owner of the land nor liable for the construction and development works in any way whatsoever. The respondent no. 2 is no way responsible for the financial transactions between the complainants and the respondent no. 1. Therefore, no amount of liability in any manner can be imposed on the respondent no. 2, since it is not a necessary party to the present complaint.
- iv. That on the other hand the present land is owned by the respondent/promoter, development of the project on the said land and other ancillaries are being undertaken by the promoter and

further consideration has been received by respondent no. 1. Therefore, the respondent no. 2 cannot be made liable for any deficiency of services or whatsoever being alleged by the complainants. Therefore, in view of aforesaid facts and circumstances, it is reiterated that the respondent no. 2 is not a necessary party in the present instance.

- v. That the respondent no. 2 is also aggrieved since the ownership of the land and execution of developing the said project vests with the promoter only who is in control of the project. The delay has occasioned due to impediments beyond the control of the promoter/developer. The grounds of delay causing hindrances in completion of the said project within the proposed deadline of August 2014 plus grace period of 120 days ranged from labour crisis to ground water issues which are beyond the control of the developer. That further, the pandemic of Covid-19 has also created further hindrances in the completion of the project which has resulted in complete stoppage of construction.
- vi. That so far as the inter-se obligations of the respondents towards the project is concerned, the respondent no. 2 has committed to the developer to make an investment and has duly performed its part of the agreement and so far as construction and development of the said project is concerned the respondent no. 2 does not own any role or responsibility by any bounds of interpretation of the clauses



of the agreement. Hence, the respondents cannot be placed at an equal podium whenever the obligation for construction and development of the project is concerned.

- vii. That without prejudice to the above, it is further submitted that the complainants are not "Consumers" within the meaning of the Consumer Protection Act, 2019 since their sole intention 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. 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.
- viii. That the complainants having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project. They have no intention of using the said flat for their personal residence or the residence of any of their family members. If the complainant had such intention they would not have invested in futuristic project. The sole purpose of the complainants was to make profit from sale of the flat at a future date. Now since the real estate market is seeing downfall, the complainants cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. It is submitted that the complainants having purely



commercial motives made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said apartment and therefore, the complaint being not maintainable must be dismissed in limine.

- ix. That the complainants have not intentionally filed their personal declarations with respect to the properties owned and/or bought/sold by them at the time of booking the impugned plot and/or during the intervening period till the date of filing of the complaint and hence an adverse inference ought to be drawn against the complainants.
- x. That the complainants have approached the respondent office in 2011 and have communicated that they complainants interested in a project which is "not ready to move" and expressed their interest in a futuristic project. It is submitted that the complainants were not interested in any of the ready to move in/near completion projects. It is submitted that on the specific request of the complainants, the investment was accepted towards a futuristic project. Now, the complainants are trying to shift the burden on the respondent as the real estate market is facing rough weather.
- xi. That the complainants, 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. This authority has no jurisdiction howsoever to entertain the present

complaint as the complainants have not come to this 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. The complainants not being 'consumer' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the Act, of 2016. This has been the consistent view of the National Consumer Disputes Redressal Commission.

- xii. Therefore, the complainants cannot be said to be genuine consumer by any standards; rather the complainants are mere investors in the futuristic project. 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.
- xiii. That the complainants have not approached this authority with clean hands and concealed the material fact that they are defaulters, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the statement of account. Due the lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited caused the present unpleasant situation. It is due to the default of

the complainants, that the allotment could not have been carried out.

- xiv. That further, even all through these years, the complainants have 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 complainants. Apparently, the complainants have been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property.
- xv. That the respondent had to bear with the losses and extra costs owing due delay of payment of installments on the part of the complainants for which they are solely liable. However, the respondents owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent 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 complainants.
- xvi. That from the initial date of booking to the filing of the present complaint, the complainants have never raised any issues or objections. Had any valid issue been raised by complainants at an

earlier date, the respondent would have, to its best, endeavored to solve such issues much earlier. However, now to the utter disappointment of the respondents, the complainants have filed the present complaint based on fabricated story woven out of threads of malice and fallacy.

- xvii. That the complainants have been acting as genuine buyer's and desperately attempting to attract the pity of this authority to arm twist the respondents into agreeing with the unreasonable demands of the complainants. The reality behind filing such complaint is that the complainants have 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.
- xviii. That this conduct of the complainants itself claims that the complainants are mere speculative investors who have invested in the property to earn quick profits and due to the falling & harsh real estate market conditions, the complainants are making a desperate attempt herein to quickly grab the possession along with high interests on the basis of concocted facts.
- xix. That the delay in delivering the possession of the apartment to the complainants herein has attributed solely because of the reasons beyond control of the respondent.

- That the delay has occurred only due to unforeseen and untackable circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the apartment for which the respondent cannot be held accountable. However, the complainants despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondent with a wrongful intention to extract monies.
- That with respect to the present transaction/agreement that time is not of the essence when the delivering of possession of the said apartment is concerned. Clause 13(a) of the agreement which stipulates the essence of time.
- that the Supreme Court in para 18 of its judgment in ***Bangalore Development Authority v. Syndicate Bank (2007) 6 SCC 711*** has held that in a contract involving construction, time is not the essence of the contract unless specified. The Hon'ble Supreme further reiterated the said principle in the case of ***N. Srinivasa v. Kuttukaran Machine***



*Tools Limited (2009) 5 SCC 182*, wherein the Court further observed in Para 27 of its judgment.

- The project faced various roadblocks and hindrances including approvals from different authorities which were beyond the control of the respondent and which in turn lead to unforeseeable delay in the construction/completion of the project and hence handing over of the possession of the flat to the complainants.
- active implementation by the Government of alluring and promising social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), further led to sudden shortage of labour/ workforce in the real estate market as the available labour were tempted to return to their respective States due to the guaranteed employment under the said NREGA and JNNURM Schemes. The said factor further created a vacuum and shortage of labour force in the NCR region. A large numbers of real estate projects, including the present project of the respondent, was struggling hard to cope with their construction schedules, but all in vain.
- The respondent faced extreme water shortage, which was completely unforeseen by any of the real estate companies,



including the respondent, in the NCR region. The respondent, who was already trying hard to cope up with the shortage of labour, as mentioned above, was now also faced with the acute shortage of water in the NCR region. The said factor of shortage of water directly affected the construction of the project at the site. To make the conditions worse, the Hon'ble High Court of Punjab and Haryana vide Order dated 16.07.2012 restrained the usage of ground water and directed to use only treated water from available sewerage treatment plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurugram District, it became difficult to timely complete the construction activities as per the schedule. The availability of treated water to be used at construction site was very limited and against the total requirement of water only 10-15% of required quantity was available at construction sites. In furtherance to the directions of Hon'ble High Court of Punjab and Haryana, the respondent received a letter bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana, informing the respondent about the complete ban on the use of

underground water for construction purposes and use of only recycled water being permitted for the said purposes.

- that the respondent neither had any control over the said directions/orders from the Hon'ble High Court nor had any control over the shortage of water in the NCR region, which in turn led to the delay in the completion and hence the handing over of the possession of the flat to the complainants.
- there has been a heavy shortage of supply of construction material i.e., river sand and bricks etc. through out of Haryana, pursuant to order of ***Hon'ble Supreme Court of India in the case Deepak Kumar etc. v. State of Haryana*** (I.A. No. 12-13 of 2011 in SLPs (C) nos. 19628-29 of 2009 with SLPs (C) No. 729-731/2011, 21833/2009, 12498-499/2010, SLP(C) CC... 16157/2011 & CC 18235/2011 dated 27.02.2012) and correspondingly, the construction progress slackened. This also caused considerable increase in cost of materials. It is noteworthy that while multiple project developers passed on such incremental costs attributable to the above reasons to the buyers, the management of the respondent assured its customers that it will not and has held fast on its promise by not passing on any of such costs to the buyers.

- xx. 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 complainants 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.
- xxi. 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 complainants 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 document 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 flat. Hence the complaint is liable to be dismissed on this ground as well.

- xxii. The respondent/promoter was owner of vast tracts of undeveloped land in the revenue estate of Villages Basai, Gadauli Kalan and falling within the boundaries of Sectors 37C and 37D Gurugram also known as Ramprastha City, Gurugram.
- xxiii. That when the complainants approached the promoter, it was made unequivocally clear to them 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 Villages Basai, Gadauli Kalan, Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainants. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural plot of the respondent.
- xxiv. The projects in respect of which the respondents have 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
	Tower-O (Nomenclature-P)	80	OC received
	(Tower A, B, C, D, E, F, G)	640	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 respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection 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.

#### **F. Findings on the objections raised by the respondent.**



**F. I Objection regarding the complainants being investors.**

11. The respondent has taken a stand that the complainants are the investors and not consumers. Therefore, they have not entitled to the protection of the Act and are 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 consumers of the real estate sector. It is settled principle of interpretation that the 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 complainants are buyers and paid total price of Rs.59,41,070/- to the promoter towards purchase of an apartment in its project. 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 complainants are allottees as the subject unit was allotted to them 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 allottees being investors are not entitled to protection of this Act also stands rejected.

#### **G. Findings on the relief sought by the complainants**

- G.1 To direct the Respondents to provide the legal offer of possession to the Complainant after receipt of occupancy certificate for the concerned tower and to make the same available to the Complainants as per Section 11(4)(b) of the Act.**
12. The respondent is legally bound to meet the pre-requisites for obtaining an occupation certificate from the competent authority. It is unsatiated that even after the lapse of more than 8 years from the due date of possession the respondent has failed to apply for OC to the competent

authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC.

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

13. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"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, —*

*.....*

*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)*

14. Clause 15(a) of the apartment buyer agreement (in short, 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 proposed to hand over the possession of the Apartment by **31.08.2014** the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."*

15. The authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
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 allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject

unit and to deprive the allottees of their 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. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days 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.
18. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.*

19. 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.
20. Taking the case from another angle, the complainant/allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @18% per annum compounded at the time of every succeeding Installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and



unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 13.01.2023 is **8.60%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%**.
22. The definition of term 'interest' as defined under section 2(z) 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;"*

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.60% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The authority has observed that the apartment buyer agreement was executed on 05.12.2011 and the due date of possession was specifically mentioned in the apartment buyer agreement as 31.08.2014. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.08.2014. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents are established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 31.08.2014 till

the handing over of the possession, at prescribed rate i.e., 10.60 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

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

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

**H. Directions of the authority**

26. 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 are directed to pay interest at the prescribed rate of 10.60% p.a. for every month of delay from the due date of possession i.e., 31.08.2014 till the date of handing over possession of the said unit after obtaining the occupancy certificate from the concerned authority.
  - ii. The arrears of such interest accrued from 31.08.2014 till the date of order by the authority shall be paid by the promoters to the allottees within a period of 90 days from date of this order and

interest for every month of delay shall be paid by the promoters to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.


- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondents shall not charge anything from the complainants which is not the part of the apartment buyer's agreement.
- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2023