

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

**Complaint no. : 1228 of 2022**  
**First date of hearing: 19.08.2022**  
**Date of decision : 13.01.2023**

Mr. Krishan Kumar Goel  
R/o: - Flat No. 32, GH7, Sector- 5, Mansa Devi Complex,  
Panchkula, Haryana- 134114

**Complainant**

Versus

M/s Ramprashtha Estate Private Limited.  
Regd. office: Plot No. 114, Sector-44, Gurugram-122001.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**APPEARANCE:**

Shri Rishabh Jain (Advocate)  
Ms. Gayatri Mansa and Sh. Navneet Kumar (Advocates)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 06.04.2022 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 thereunder or to the allottee 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                  | "Ramprastha City", Sectors 92, 93 & 95, Gurugram, Haryana      |
| 2.    | Project area                         | 128.594 acres  |
| 3.    | Nature of the project                | Residential colony   |
| 4.    | DTCP license no. and validity status | 44 of 2010 dated 09.06.2010 valid upto 08.06.2016              |
| 5.    | Name of licensee                     | Ramprastha Housing Pvt Ltd and others                          |
| 6.    | Date of environment clearances       | 10.05.2019<br>[as per information obtained by planning branch] |
| 7.    | RERA Registered/ not registered      | <b>Registered vide no. 13 of 2020 dated 05.06.2020</b>         |
| 8.    | RERA registration valid up to        | 31.12.2024   |
| 9.    | plot no.                             | E-336  |

|     |   |  |
|-----|---|--|
|     |   | (Page no. 53 of the complaint)   |
| 10. | Unit area admeasuring                       | 300 sq. Yds.<br>(Page no. 53 of the complaint)   |
| 12. | Welcome letter                              | 30.04.2014<br>(Page no. 43 of the complaint)   |
| 13. | Allotment letter                            | 30.04.2014<br>(Page no. 44 of the complaint)   |
| 14. | Date of execution of plot buyer's agreement | 09.05.2014<br>(Page no. 50 of the complaint)   |
| 15. | Possession clause                           | <b>11. Schedule for possession</b><br>(a). "The company shall endeavour to offer possession of the said plot, within thirty <b>(30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan.</b> "<br>(Page no. 56 of the complaint). |
| 16. | Due date of possession                      | 09.11.2016<br>(Note: - 30 months from date of agreement i.e., 09.05.2014)  |
| 17. | Total sale consideration                    | Rs. 50,65,000/-  |

|     |   |  |
|-----|---|--|
|     |   | [As per payment plan page no. 65 of the complaint]   |
| 18. | Amount paid by the complainant  | Rs. 44,83,000 /-<br>[As per averment of complainant at page no. 34 of the complaint and the same was admitted by the respondent] |
| 19. | Payment plan  | Possession linked payment plan<br>[As per payment plan page no. 65 of the complaint]   |
| 20. | Occupation certificate /Completion certificate                                | Not received   |
| 21. | Offer of possession   | Not offered  |
| 22. | Delay in handing over the possession till date of this order i.e., 13.01.2023 | 6 years 2 months and 4 days  |

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- I. That the complainant is a peace loving and law-abiding citizen of India, who nurtured hitherto an un-realized dream of having his own home on a plot in upcoming society with all facilities and standards, situated around serene and peaceful environment. The complainant always leads his life with full of honesty, simplicity and truthfulness and epitomizes utmost kindness and humanism.

- II. That the grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed in regard to the plot no. E-336, measuring 300 square yards in Sectors 92, 93 & 95, Ramprastha City, Gurugram, Haryana, purchased by the complainant paying his hard-earned money.
- III. That based on the licence, and even prior to the grant of the licence, the respondent collected a huge amount from gullible and naïve buyers including the complainant from the year 2006 to 2014 and promised the complainant to hand over the possession of the plot latest by 09.11.2016 as per the plot buyer's agreement. The complainant, in total, paid a sum of Rs.44,83,000/- way back till February 2014, as and when demanded by the respondent. Still the respondent failed to timely handover the possession of the plot to the complainant till date, even after a delay of more than five years and four months.
- IV. That the respondent published very attractive brochure, highlighting the residential plotted colony called 'Ramprastha City' at Sector 92, 93 & 95, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developer of the country, in order to lure prospective customers to buy the plots in the project including the complainant. There are



fraudulent representations, incorrect and false statements in the brochure. The complainant invites attention of the authority, Gurugram to Section 12 of the Act, 2016. The project was launched in 2006 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.

- V. That the complainant was approached by the sale representatives of respondent, who made tall claims about the project '**Ramprastha City**' as the world class project. The complainant was invited to the sales office and was lavishly entertained, and promises were made to him that the possession of his plot would be handed over in time including that of parking, horticulture, club and other common areas. The complainant was impressed by their oral statements and representations and ultimately lured to pay Rs.16,00,000/- to the respondent via cheques no. 440401 dated 04.09.2006 and 010288 dated 20.05.2008, for registration of a 300 square yards plot and thereafter the respondent/promoter issued payment receipt no. 195 dated 21.05.2008 to him.
- VI. That a plot buyer agreement was executed amongst three parties namely, that the complainant i.e., Krishan Kumar Goel and the respondents i.e., Ramprastha Promoters Private Limited and the Ramprastha Promoters and Developers Private Limited on 01.03.2013 wherein respondent admitted to have receive

Rs.16,00,000/- has been paid by the complainant for provisional allotment of one plot admeasuring 300 sq. yards. In Sectors 92,93 and 95 Gurugram. Thereafter, he has paid a sum of Rs.6,03,000/- and Rs.12,75,000/- respectively for the said plot.

- VII. That the respondent issued a welcome letter as well as allotment letter both dated 30.04.2014, for allotment of a residential plot no. E-336, admeasuring 300 sq. yards. And having customer ID as RC-0224 to the complainant of the said project.
- VIII. That the complainant paid a total sum of Rs.44,83,000/- i.e., around 88% of the total sale consideration before execution of the plot buyer's agreement. The respondent violated section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the plot before the execution of the plot buyer's agreement. The total cost of the plot was Rs.50,65,000/- (including EDC, IDC, PLC, and IFMS, etc). while the respondent had collected a total sum of Rs.44,83,000/- of the total cost of the plot till February 2014.
- IX. That the plot buyer's agreement was executed between both the parties on 09.05.2014 for the said plot in the respondent project, and the date of offer for possession as per clause 11(a) of the plot buyer's agreement comes on 09.11.2016, calculated 30 months from the date of signing of the agreement.

- X. That the complainant approached the respondent and pleaded for delivery of possession of his plot as per the plot buyer's agreement on various occasions. But it did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of his plot, thereby the respondent violated section 19 of the Act, 2016.
- XI. The complainant has lost confidence and in fact has got no trust left in the respondent as it has deliberately and wilfully indulged in undue enrichment, by cheating him besides being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the plot in time and then remaining non-responsive to the requisitions of the complainant.
- XII. The complainant does not intend to withdraw from the project. As per the obligations of the respondent/promoter under section 18 of the Act, 2016 read with rules 15 and 16 of the rules, 2017, it has an obligation to pay interest on the delayed possession on the amount deposited by him at the rate prescribed. The respondent has neglected its part of the obligations by failing to offer a legitimate and rightful possession of the plot in time.
- XIII. That the respondent/seller/builder/promoter is habitual of making false promises and has deceptive behaviour. The respondent has earned enough monies by duping the innocent complainant and



other such buyers through unfair trade practices and deficiencies in services and has caused the complainant enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury.

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

4. The complainant has sought following relief(s)

- I. To direct the respondent to complete the development of the plot along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.
- II. To direct the respondent to handover the legal and rightful possession of the plot to the complainant, after receiving the completion certificate (CC) and other required approvals from the competent authorities.
- III. Direct the respondent to pay interest for every month of delay in handing over the possession of the plot since 09.11.2016 to the complainant, on the amount taken from him towards sale consideration and other charges for the aforesaid plot, with interest at the prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the plot to the complainant.
- IV. Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the plot, with liberty to him to seek appropriate remedy if it fails to handover the possession on

the date before the Haryana Real Estate Regulatory Authority, Gurugram.

- V. Direct the respondent to not charge anything beyond the charges stipulated in the plot buyer's agreement.
  - VI. Direct the respondent to pay of Rs.1,00,000/- towards the litigation expenses incurred on filling the present complaint.
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 is not maintainable in its authority and the complaint is strictly liable to be dismissed on the grounds presented hereunder by the respondent. That the authority has no jurisdiction to entertain the present complaint. It is submitted therefore that this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
  - II. That the complainant has approached the respondent in the year 2006 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sector 37-D, Gurugram. The complainant fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere

futuristic project have decided to make an investment in the said project for speculative gains. Thereafter, the complainant has paid a booking amount of Rs.16,00,000/- through cheques no. 440401 & 010288 dated 04.09.2006 and 20.05.2008, respectively towards booking of the said project pursuant to which a receipt bearing no. 195 dated 21.05.2008 was issued to the complainant. It was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.

- III. That the complainant has paid an amount of Rs.44,83,000/- which is part or total consideration of the plot. That the said payment were not full and final payments and further payments inter alia towards government dues on account of EDC/IDC charges are payable at the time of allotment of plot and execution of plot buyer's agreement.
- IV. That further no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the Authority which is within the knowledge of the complainant. As per averments made by him, the petitioner has claimed interest from the November 2016 which also shows that the amount claimed by the complainant has hopelessly barred by limitation.
- V. The claims for possession are superfluous and non-est in view of the fact that the complainant is actually not even entitled to claim possession of the plot as on date. It is only on default in

offer/handover of possession that the complainant right to claim possession/refund crystalizes.

- VI. That no documents have been submitted by the complainant in support of the time for possession and as per the complainant own averments the plot was required to handover in three years period i.e., in November 2016. Hence, it is submitted, without admitting to such date of handover of possession cited by the complainant herein, even if the date of possession was to be construed in November 2016, the period of limitation has come to an end in the year November 2019. There is no obligation on the part of the respondents to allot or handover any plot to the complainant since the he has failed to provide any evidence of execution of plot buyer's agreement in favour of the complainant.
- VII. The complainant has attempted to create a right in their favour by resorting to terminate transactions which have become hopelessly barred by time and after the period of limitation has lapsed it cannot be revived. That the complainant was never interested in fulfilling the necessary formalities towards booking of the said plots. Neither the complainant has made any further payment for plot as such in Ramprastha City nor did they submit any application for the same. It is apparent that the complainant never turned up for the completion of the formalities.
- VIII. That the booking did not fructify and proceed to the stage of execution of plot buyer's agreement due to the complainant own



failure to pay the full consideration towards purchase price of the said plot and complete the formalities.

- IX. That without prejudice to the above, that the complainant is not "Consumer" 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 land 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.
- X. The complainant having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project. He has no intention of using the said plot for their personal residence or the residence of any of their family members. If the complainant had such intentions, they would not have invested in a project in which there was no certainty of the date of possession. The sole purpose of the complainant was to make profit from sale of the plot at a future date. Now since the real estate market is in a desperate and non-speculative condition, the complainant cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. That the complainant has purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said futuristic undecided plot and therefore, the present complaint being not maintainable and must be dismissed in limine.



XI. That complainant has approached the respondent office in August/September 2006 and have communicated that the complainant interested in a project which is "not ready to move" and expressed their interest in a *futuristic project*. That the complainant was not interested in any of the ready to move in/near completion projects of the respondent. It is submitted that a futuristic project is one for which the only value that can be determined is that of the underlying land as further amounts such as EDC/IDC charges are unknown and depends upon the demand raised by the statutory authorities. That on the specific request of the complainant, the investment was accepted towards a futuristic project and no commitment was made towards any date of handover or possession since such date was not foreseeable or known even to the respondent. The respondent had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainant towards development charges, but the complainant was duly informed that such charges shall be payable as and when demands will be made by the Government. The complainant is elite and educated individuals who have knowingly taken the commercial risk of investing a project the delivery as well as final price were dependent upon future developments not foreseeable at the time of booking transaction. Now the complainant is trying to shift the burden on the respondent as the real estate market is facing rough weather.

- XII. That therefore the complainant cannot be said to be genuine consumer by any standards; rather the complainant is mere investor 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 complainant knowingly invested in an undeveloped land in a futuristic area where on the date of investment by him, even the zoning plans were not sanctioned by the Government. It is understood that the applicants are educated and elite individuals and had complete understanding of the fact that unless zoning plans have been approved their investment is in the shape of an undeveloped agricultural land; however as and when zoning plans have been approved, it will be possible to implement the development of a residential plotted colony in the area and the investment of the complainant will appreciate substantially. This clearly shows that the complainant had sheer commercial motives. It is submitted that an investor in a futuristic undeveloped plot cannot be said to be a genuine buyer by any standards.
- XIV. That complainant has nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". Therefore, the complainant cannot be said to be consumers of respondent within the caricature of consumer within the Consumer Protection Act, 1986. The complainant has deliberately concealed the motive and intent behind purchasing of the said unit. In

this behalf, the authority may strictly direct the complainant to adduce any documentary evidence in support of their averments.

- XV. That the complainant is already in ownership of one property which the complainant has materially concealed. Hence, by any standard of imagination, the present complainant cannot to be said to have purchased the present property for personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or gain, the complainant is plainly investors who have filed the complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, the complainant cannot be said to have approached this authority with clean hands and have approached this authority only with malafide intention to harass the respondent in the most harm causing way possible.
- XVI. That the complainant has concealed its own inactions and defaults since the very beginning. The complainant has deliberately concealed the material fact that the complainant is at default due to non-payment of developmental charges, govt charges (EDC & IDC), PLC and interest free maintenance security (IFMS), which has also resulted into delay payment charges/ interests.
- XVII. The initial date of booking to the filing of the present complaint, the complainant has never raised any issues or objections. Had any valid issue been raised by complainant 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 respondent, the

complainant has filed the present complaint based on fabricated story woven out of threads of malice and fallacy.

XVIII. That apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent: -

- That 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 complainant has indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of authority and in further view of the fact the complainant has 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.
- That the complainant primary prayer for handing over the possession of the said plot is entirely based on imaginary and concocted facts by the complainant and the contention that the respondent 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 realty the complainant has complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated September,2006 was made by the complainant towards a *future potential project* of the respondent and 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.

- The complainant has approached the respondent, 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 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 plot of the respondent.

XIX. That even in the adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondent has 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 buyer/allottee. That even in such harsh market conditions, the respondent has been continuing with the construction



of the project and sooner will be able to complete the development of the project.

XX. 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<br>Tower I, J, K, L, M<br>Tower H, N<br>Tower-O (Nomenclature-P)<br>(Tower A, B, C, D, E, F, G) | 400<br>160<br>80<br>640 | OC received<br>OC received<br>OC received<br>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 submissions made by the parties.

**E. Jurisdiction of the authority**

8. 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. I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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**

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.I Objection regarding entitlement of DPC on ground of complainant being investor**

11. 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 is 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 observed 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 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 buyer and he has paid total price of Rs.44,83,000/- 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 plot buyer's agreement executed between

promoter and complainants, it is crystal clear that the complainants are allottee(s) 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 Direct the respondent to complete the development of the plot along with all facilities and amenities like, water, electricity, road, parks, club, etc. immediately.**
- G. II Direct the respondent to hand over the legal and rightful possession of the plot to the complainant after receiving the completion certificate and other required approvals from the competent authority.**
- G. III. Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the plot, with liberty to the complainant to seek appropriate remedy if the respondent fails to handover the possession on the date before the authority, Gurugram.**
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 6 years from the due date of



possession the respondent has failed to apply for CC/part CC to the competent authority. The promoter is duty bound to obtain CC/part CC and hand over possession only after obtaining CC/part CC.

**G. IV Direct the respondent to pay interest for every month of delay in handing over the possession of the plot since 09.11.2016 to the complainant, on the amount taken from the complainant towards sale consideration and the other charges for the aforesaid plot, with interest at the prescribed rate as per the Act of 2016, till the respondent hands over the legal and rightful possession of the plot to the complainant.**

13. In the present complaint, the complainant intends to continue with the project and is 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."*

14. Clause 11 of the plot buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"11. Schedule for possession**

*(a) "The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other changes due and payable according to the payment plan.*

*(b) .....*

*(c) .....*

***(d) Failure of Company to offer possession and payment of compensation.***



*In the event the Company fails to offer of possession of the said plot, within thirty (30) months from the date of execution of this Agreement then after the expiry of grace period of 6 months from the said 30(thirty) months subject to the intending Allottee(s) having made all payments as per the payment plan and subject to the terms, conditions of this Agreement and bring force majeure circumstances, .....*"

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment by the intending complainant of total price, stamp duty, registration charges and any other changes due and payable according to the payment plan. 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 making payment as per the plan 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 plot 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.
16. **Admissibility of grace period:** As per clause 11 of the plot buyer's agreement, the promoter has proposed to hand over the possession of

the plot within 30 months from the date of execution of this agreement and further 6 months grace period subject to timely payment by the intending allottee of total price, stamp duty, registration charges, and any other charges due and payable according to the payment plan. The authority observed that in the said clause, the respondent has failed to mention any expression w.r.t entitlement of grace period for calculating due date of possession, therefore, the promoter/respondent is not entitled to any grace period.

**17. Payment 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.*

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., 13.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

20. 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:

*"(z) "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. 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 complainant in case of delayed possession charges.

22. 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 respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the agreement executed between the parties on 09.05.2014, the possession of the subject plot was to be delivered within a period of 30 months from the date of execution of this agreement which comes out to be 09.11.2016. 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 09.11.2016. The respondent has failed to handover possession of the subject plot 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 respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 09.11.2016 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. V      Direct the respondent to pay of Rs. 1,00,000/- towards the litigation expenses incurred on filling the present complaint.**



23. 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 litigation expenses.

#### **H. Directions of the authority**


24. 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 respondent is directed to pay interest at the prescribed rate i.e., 10.60% p.a. for every month of delay from the due date of possession i.e., 09.11.2016 till the date of handing over possession after obtaining completion certificate/part completion certificate from the competent authority.



- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The arrears of such interest accrued from 09.11.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
  - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which are the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - v. The respondent shall not charge anything from the complainant which is not the part of the agreement.
25. Complaint stands disposed of.
26. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 13.01.2023