

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

**Complaint no.** 692 of 2022  
**Date of filing of complaint** 25.02.2022  
**Date of decision** 13.01.2023

1. Mr. Gagandeep Singh  
2. Pritpal Singh Banga  
both sons of Shri Joginder Singh Banga  
RR/o: - House No. 300, Saraswati Gali, Mustafabad,  
District Yamuna Nagar, Haryana- 133013

**Complainants**

Versus

M/s Ramprashtha Promoters and Developers Private  
Limited.

**Corporate Office at:** Plot No. 114, Sector-44,  
Gurugram-122002

**Also, at:** - C-10, C Block, Market, Vasant Vihar, New  
Delhi- 110057

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Sanjeev Kumar Arora

Member  
Member

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)  
Ms. Gayatri Mansa and Shri Navneet Kumar (Advocates)

Complainants  
Respondent

**ORDER**

1. This complaint 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**

2. 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.	001, 10 <sup>th</sup> floor, tower/block- C (Page no. 51 of the complaint)	
14.	Unit area admeasuring	1750 sq. ft. (Page no. 51 of the complaint)	
15.	Date of execution of apartment buyer agreement	05.09.2011 (Page no. 47 of the complaint)	
16.	Possession clause	<b>15. POSSESSION</b> <b>(a) Time of handing over the Possession</b> 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,	



		<p>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>(Page no. 61 of the complaint)</p>
17.	Grace Period	<b>Not utilized</b>
18.	Due date of possession	31.08.2014 [As per mentioned in the buyer's agreement]
19.	Total sale consideration	Rs.68,24,258/- (As per mention in the apartment buyer's agreement page no. 51 of the complaint)
20.	Amount paid by the complainants	Rs.58,80,626/- (As per payment schedule dated 18.02.2020, filed by the counsel for the complainants during proceeding dated 13.01.2023)
21.	Occupation certificate /Completion certificate	Not received

22.	Offer of possession	Not offered
23.	Date of death certificate of the allottee no. 2 i.e., Mr. Joginder Singh Banga	11.01.2022 (Page no. 43 of the complaint)
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 in the year 2011, the complainant Gagandeep Singh along with his father Joginder Singh (since deceased and now being represented by the complainants) while searching for an apartment in the vicinity of NCR visited the office of the respondent company. The agents of the respondent company told them about the moonshine reputation of the company and the agents of the respondent company made huge presentations about of the project namely "Skyz" at Sectors 37D, Gurugram a project having land parcel admeasuring a total area of approximately 60.5112 acres of land, under the license no. 33 of 2008 dated 19.02.2008, issued by DTCP, Haryana, Chandigarh and also assured that they have delivered several projects in the national capital region and thereby invited applications from prospective buyers for the purchase of unit in the said project.

The respondent confirmed that the project had got building plan approval from the authority and handed over one brochure to them which portrayed the project like heaven and tried to hold their interest in every possible way and incited for payments. They were trapped in the hands of the agents of the respondent company like a fish.

- II. That relying on various representations and assurances given by the respondent company and on belief of such assurances, they booked a unit in the project by paying a booking amount of Rs.2,50,000/- vide cheque no. 585052 and Rs.3,02,000/- vide cheque no. 58500543 towards the booking of the said unit bearing no. 1001, 10<sup>th</sup> Floor, Tower-C, in Sector 37D, Gurugram having super area measuring 1725 sq. ft. to the respondent dated 10.03.2011 and the same was acknowledged by the respondent for a total sale consideration of the unit i.e. Rs.68,24,258/- which includes basic price, car parking charges, and development charges, PLC, IFMS, IBRF, club membership charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.
- III. That an apartment buyer's agreement was executed between the allottees and the respondent on 05.09.2011. As per clause 15(a) of the apartment buyer's agreement, the respondent was to

deliver the possession of the apartment by 31.08.2014 + 120 day of grace period for applying and obtaining the occupation certificate carte in respect of the group housing project. Therefore, due date of possession comes out to be 31.08.2014.

- IV. That one of the allottee namely Sh. Joginder Singh Banga died on 11.01.2022 leaving behind his legal heirs Mr. Gagandeep Singh, Mr. Pritpal Singh Banga (both sons), Mrs. Satnam Kaur (widow) and Mrs. Kamaldeep Kaur (daughter). Furthermore, the deceased executed a registered will dated 20.04.2021 in favor of both the sons namely Mr. Gagandeep Singh and Mr. Pritpal Singh Banga with regard to his estate and bequeathing the subject unit in favour of his both the sons in equal shares. So, in this way the claimants became allottees of the subject unit to the extent of 75% and 25% shares respectively.
- V. That the allottees having dream of own apartment in NCR, signed the agreement in the hope that the unit would be delivered on or before 31.08.2014 and they were also handed over one detailed payment plan which was a construction linked plan. But unfortunately, the dream of owning a unit by the allottees was shattered due to dishonest, unethical attitude of the respondent.
- VI. That at the time of execution of the agreement, the allottees had objected towards the highly titled and one-sided clauses of the

agreement. However, the respondent turned down their concerns and curtly informed that the terms and conditions in the agreement are standard clauses and thus, no change can be made. A bare perusal of the agreement reveals that the terms and conditions imposed were totally biased in so far as the disparity between the bargaining power and status of the parties, titled the scale in the favour of the respondent and they fabricated the agreement according to their whims and fancies.

- VII. That as per the demands raised by the respondent, based on the payment plan, the allottees to buy the captioned unit have already paid a total sum of Rs.77,21,025/-, towards the said unit against total sale consideration of Rs.68,24,258/-. They approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project.
- VIII. That the allottees went to the office of respondent several times and requested the respondent to allow they visit the site, but it was never allowed by saying that they do not permit any buyer to visit the site during construction period and they even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- IX. That the allottees contacted the respondent on several occasions and were regularly in touch with the respondent but it was never



able to give any satisfactory response to them regarding the status of the construction and was never definite about the delivery of the possession. Despite having made multiple tall representations to the allottees, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees and such acts of the respondent is also illegal and against the spirit of the Act, 2016 and the Rules, 2017.

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

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

- I. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of ABA.
- II. Direct the respondent to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
- III. Direct the respondent to pay the interest on the total amount at the prescribed rate of interest as per Act of 2016 from due date of possession till date of actual physical possession as the possession being denied to the complainants by it.

- IV. The respondent be pleased to restrain the respondent from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.
  - V. Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
  - VI. Direct the respondent to provide the committed date of completion of the unit and exact lay out plan of the said unit.
  - VII. Direct the respondent to substitute the name of legal heir's namely Gagandeep Singh and Pritpal Singh Banga in place of second allottee deceased Sh. Joginder Singh Banga.
  - VIII. Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.
  - IX. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like interest free maintenance security deposit, fixed deposit towards the HVAT, which in any case is not payable by the complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds: -

- i. That 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 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.
- iii. 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 complainants 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.

- iv. 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.
- v. That the complainants have approached the respondent office in 2011 and have communicated that the 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.

- vi. 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 'consumers' 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.
- vii. 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.
- viii. 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.

- ix. 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.
- x. 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 respondent 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.

- xi. 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 respondent, the complainants have filed the present complaint based on fabricated story woven out of threads of malice and fallacy.
- xii. 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.

xiii. 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.

xiv. 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.



- xv. That thereafter Ministry of Finance, Government of India in the wake of COVID-19 pandemic has invoked *Force Majeure* and thereby extended the timelines for completion of real estate projects by 6 months period starting from February 2020.
- xvi. That the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainants/allotment offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said Rules, has been executed between both the parties. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 10.03.2011, executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for possession, refund, interest and compensation, as provided under Sections 12, 14, 18, and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of the said Act and the said Rules. Thus, in view of the submissions made above, no relief can be granted to the complainants.

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.
8. Through a perusal of the complaint shows that the complainants were allotted a unit in the group housing colony namely "Skyz" situated in sector- 37D, Gurugram but while filing written reply, the respondent on 25.04.2022, referred to allotment of a plot and that too with incorrect particulars of dates of buyer's agreement.

**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.I Territorial jurisdiction**

9. 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**

10. 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.*

11. 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.**

12. 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.58,80,626/- 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.

**F. II Objection regarding jurisdiction of authority w.r.t. booking application form executed prior to coming into force of the Act**

13. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the booking application form executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules

and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 and followed in case of appeal no. 173 of 2019 titled as *Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*, dated 17.12.2019 by the Haryana Real Estate Appellate Tribunal and which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

- G. I** Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of ABA.
- G. II** Direct the respondent to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
- G.III** Direct the respondent to substitute the name of legal heir's namely Gagandeep Singh and Pritpal Singh Banga in place of second allottee deceased Sh. Joginder Singh Banga.
15. Gagandeep Singh complainant along with his father Sh. Joginder Singh Banga booked the subject unit in its project known as "Skyz" situated in sector 37C Village Gadauli Kalan, Gurugram. A buyer's agreement in this regard was executed on 05.03.2011, the due date of completion of

project and offer of possession of the allotted unit was agreed upon between the parties as 31.08.2014. It has come on record the allottees paid a total sum of Rs.58,80,626/- to the respondent against the allotted unit. But despite paying more than the sale price and the passage of the due date, the respondent failed to complete the project and offer possession of the allotted unit to the allottees. Meanwhile one of the allottee namely Joginder Singh Banga expired on 11.01.2022 and his estate including the subject unit was succeeded by his sons i.e., the complainants in equal shares. So, in this way on the basis of registered will dated 20.04.2021 the complainants became allottees of the subject unit. Though in the record of the respondent no such entries have been made but in view of testamentary deposition of the deceased allottees, the promoter is bound to correct its record with regard to the subject unit as per provisions of law.

16. While filing written reply it is pleaded by the respondent that the project could not be completed within the stipulated period due to non-compliances of various obligation by the allottees including the complainants. The respondent completed a number of projects and delivered their possession to the allottees. So, no fault in this regard can be found in the case in hand. But all the pleas advanced in this regard are devoid of merit. The allottees have already paid more than 80% of the sale consideration of the subject unit and the due date of the



completion of the unit expired more than 8 years back. There may be some delay which can be explained but not such a long period. The project where the complainants were allotted the unit is still incomplete and OC of the same has not been received. The respondent is legally bound to meet the pre-requisites for obtaining an occupation certificate from the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC. So, the respondent is directed to complete the project and obtain occupation certificate and offered the possession of the subject unit to the complainants.

**G. IV Direct the respondent to pay the interest on the total amount at the prescribed rate of interest as per Act of 2016 from due date of possession till date of actual physical possession as the possession being denied to the complainants by it.**

**G. V. The respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act, 2016, before signing the Conveyance Deed/sale deed.**

17. 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)*

18. 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."*

19. 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.
20. 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.

21. **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.

22. **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.*

23. 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.
24. 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.

25. 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%**.

26. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

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

27. 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.

28. 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 05.09.2011 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 respondent is 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.VI. The respondent be pleased to restrain the respondent from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.**

29. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

**G.VII Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.**

30. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in

complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd. on date .....**

**G. VIII Direct the respondent to provide the committed date of completion of the unit.**

31. The above-mentioned relief sought by the complainants was not pressed by the during the course of arguments. The authority is of the view that the complainants do not intend to pursue the above-mentioned relief sought. Hence, the authority has not returned any finding w.r.t. to the above-mentioned relief.

**G. IX Direct the respondent to provide the exact lay out plan of the said unit.**

32. As per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent/promoter is directed to provide details of license and statutory approvals to the complainants within a period of 30 days.

**G.X. Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.**

33. This issue has already been dealt by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein** it is held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder



buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

**G. XI. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like interest free maintenance security deposit, fixed deposit towards the HVAT, which in any case is not payable by the complainants.**

- **Interest Free Maintenance Security**

34. This issue has already been dealt by the authority in complaint bearing no. *CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein* it is held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure, it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act.

- **VAT**

35. The Govt. of Haryana, Excise and Taxation Department vide **notification no. S.O.89/H.A.6/2003/S.60/2014 dated 12.08.2014** provided a lump-sum scheme in respect of builders/developers which was further amended vide another **notification no. 23/H.A.6/2003/S.60/2015 dated 24.09.2015** according to which the builder/developer can opt for this scheme **w.e.f. 01.04.2014**. Under the above scheme, a developer had an option to pay lump sum tax in lieu of tax payable by him under the Act, by way of lump sum tax calculated at the compounded rate of 1% of entire aggregate amount specified in the agreement or value specified for the purpose of stamp duty, whichever is higher, in respect of the said agreement.
36. The builder/developer opting for this scheme here-in-after shall be referred to as the 'Composition Developer'. **This scheme remained in force till 30.06.2017**. The purpose of the lump sum scheme was to mitigate the hardship being caused in determining the tax liability of the builders/ developers. Again, most of the builders opted/availed the benefit of the scheme. The list of the builders who opted the scheme is also available on the website of Excise and Taxation Department, Haryana. **Thus, the VAT liability for developer/builder opted for this scheme for the period 01.04.2014 to 30.06.2017 comes to 1.05%.**

37. Further, in case any builder/ developer had not opted for any of the above two schemes then the VAT liability comes to approximately 4-5 percent (maximum). It is noteworthy that the amnesty scheme was available up to 31.03.2014, however the same was silent on the issue of charging VAT @ 1.05% from the buyers/ prospective buyers whereas in the lump-sum/ composition scheme under rule 49(a) of the HVAT Rules, 2003, it was specifically mentioned that incidence of cost has to be borne by the promoter/ builder/developer only. **Thus, the builders/developers who opted for the lump-sum scheme, were not eligible to charge any VAT from the buyers/prospective buyers during the period 01-04-2014 to 30-06-2017. In other words, the developer/builder has to discharge the VAT liability out of their own pocket.**
38. The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only. The respondent-promoter is directed to adjust the said amount, if charged from the allottee with the dues payable by the allottee or refund the amount if no dues are payable by the allottee.

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

39. 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 to the complainants against the paid-up amount 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 promoter 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 promoter 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

40. Complaint stands disposed of.


41. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2023

  
**(Vijay Kumar Goyal)**

Member

**HARERA**  
GURUGRAM