

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

Complaint no. : 56 of 2023
Date of filing of complaint: 09.01.2023
Order reserved on: 02.05.2023
Order pronounced on: 28.07.2023

1. Mr. Amit Yadav
2. Mrs. Minoti Rao
Both RR/o: - 12A, Delmon Homes, Delmon Avenue
Adliya, Bahrain.
Also, At: - 76/129, Saket Colony, Rajpur Road,
Dehradun, Uttarakhand - 248001

Complainants

Versus

M/s Ramprashtha Promoters and Developers Private
Limited.
Registered office at: - C-10, C- Block Market, Vasant
Vihar, New Delhi- 110057
Corporate office at: - Plot no. 114, Sector- 44,
Gurugram- 122002

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Sushil Yadav (Advocate)
Ms. R Gayatri Manasa (Advocate)

**Complainants
Respondent**

ORDER

1. The present 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 there under 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 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	"Ramprastha City", Sectors 37C and 37D, Gurugram, Haryana
2.	Project area	105.402 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	128 of 2012 dated 28.12.2012 valid upto 06.4.2025
5.	Name of licensee	KNS Nirman
6.	RERA Registered/ not registered	Not registered
7.	plot no.	B- 21, (Page no. 23 of the complaint)
8.	Unit area admeasuring	300 sq. Yds. (Page no. 23 of the complaint)
9.	Welcome letter	15.09.2014 (Page no. 13 of the complaint)
10.	Allotment letter	15.09.2014 (Page no. 14 of the complaint)
11.	Date of execution of plot buyer's agreement	10.01.2015 (Page no. 20 of the complaint)
12.	Possession clause	11. Schedule for possession



		<p>(a). "The company shall endeavour to offer possession of the said plot, within thirty (30) months with another grace period of 6 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."</p> <p>(Page no. 27 of the complaint).</p>
13.	Grace period	<p>Not allowed</p> <p>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 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. 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.</p>
14.	Due date of possession	<p>10.07.2017</p> <p>[Calculated on the basis of the date of plot buyer's agreement i.e., 10.01.2015]</p>
15.	Basic price of the plot	<p>Rs.1,42,80,000/-</p> <p>(Page no. 39 of the complaint)</p>
16.	Amount paid by the complainant	<p>Rs,1.37,70,000/-</p> <p>[As per submitted by complainant page no. 3 of the complaint and the same was admittedly by the respondent in his reply]</p>



17.	Occupation certificate /Completion certificate	Not received
18.	Offer of possession	Not offered
19.	Delay in handing over the possession till date this order i.e., 28.07.2023	6 years and 18 days

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- I. That the respondents gave advertisement in various leading Newspapers about their forthcoming project named "Ramprastha City, Sector 37C & 37D, Gurugram", promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, booked a plot measuring 300 sq. yards. in aforesaid project of the respondent for total sale consideration is Rs.1,42,80,000/-. They made payment of Rs.1,37,70,000/- to the respondent vide different cheques on different dates.
- II. That the plot buyer's agreement was executed on dated 10.01.2015 and as per plot buyer's agreement the respondent had allotted a plot bearing No. B-21 having area of 300 sq. yards. to the complainants. That as per para-No. 11 of the agreement, the respondent had agreed to deliver the possession of the plot within 30 months from the date of signing of plot buyer's agreement i.e., 09.07.2017 with an extended period of 180 days.

- III. That the complainants used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of them. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the plot without completing the work and not handing over the possession on time. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant.
- IV. That despite receiving of more than 90% approximately payments on time for all the demands raised by the respondent for the said plot and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted plot to the complainants within stipulated period.
- V. That it could be seen that the construction of the block in which the complainants plot was booked with a promise by the respondent to deliver the plot by 09.07.2017 but was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
- VI. That due to this omission on the part of the respondent, they have been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial

losses. This could have been avoided if the respondent had given possession of the plot on time. That as per clause 11(C) of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.90/- per sq. yd. per month of the total area of the plot. That a clause of compensation at such a nominal rate of Rs.90/- per sq. yd. per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the plot even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs.90/- per sq. yd. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges @ 24% per annum interest on delayed payment.

- VII. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by them from the promise date of possession till the plot is actually delivered to the complainants.
- VIII. That the complainants have requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the plot in question along with prescribed interest on the amount deposited by the complainants, but respondent has flatly refused to do so.

Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to them.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - i. Direct the respondent to pay delayed possession charges from the due date of possession till actual handing over the possession.
5. On the date of hearing, the authority explained to the respondent /promoter on the contravention 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, and the complaint is liable to be dismissed on the grounds presented hereunder by the respondent. That the Haryana Real Estate Regulatory Authority has no jurisdiction to entertain the present complaint. The respondent has also filed an application questioning the jurisdiction of the authority based on several provisions of the relevant statutes. It is submitted therefore that this reply is without prejudice to the rights and contentions of the respondents contained in the said application.
 - II. That the complainants had approached the respondent in the year 2014 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in sector 37C and

37D, Gurugram. The complainants being fully 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. That thereafter, the complainants have paid a booking amount of Rs.1,37,70,000/- through RTGS dated 01.09.2014; 10.11.2014 respectively towards booking of the said project pursuant to which a receipt bearing no. RPDPL/RC/B-21/0268 and RPDPL/RC/B-21/033/ were issued to the complainants. It was clarified at the time of booking itself that a specific plot shall only be earmarked once the zoning plans are approved.

- III. That the complainants have resorted to filing a complaint solely on the basis of false claims and baseless accusations against the respondent while concealing its own defaults and laches for which the complainants are solely liable.
- IV. That further, they have paid an amount of Rs.1,37,70,000/- partial consideration of the plot. It is submitted that the said payments were not full and final payments and further payments inter alia towards government dues on account of other charges are payable at the time of allotment of plot and execution of plot buyer agreement. No date of possession has ever been mutually agreed between the parties.
- V. 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 statutory authority which is within the knowledge of the complainants. Further, the claims for possession are superfluous and non-est in view of the fact that the

complainants are actually not even entitled to claim possession of the plot as on date. It is submitted that it is only on default in offer/handover of possession that the complainants right to claim possession/refund crystalizes.

- VI. That the complainants have 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. Further that the complainants were never interested in fulfilling the necessary formalities towards booking of the said plots. Neither the complainants have 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 complainants never turned up for the completion of the formalities.
- VII. That since the Act of 2016 does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 2019. That the plain reading of the definition of the term "Consumer" envisaged under the Act of 2019 makes it clear that the present complainants does not fall within the walls of the term "Consumer". That further the complainants are mere investors who has invested in the project for commercial purposes.
- VIII. That without prejudice to the above, it is further submitted that the sole intention of the complainants were to make investment in a futuristic project of them 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 and neither there was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.

IX. 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 and the complainants have no intention of using the said plot for their personal residence or the residence of any of their family members and if the complainants 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 complainants was to make profit from sale of the plot at a future date and now since the real estate market is in a desperate and non-speculative condition, the complainants have cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. That it is submitted that the complainants having 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.

X. That the complainants have intentionally, not 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.

- XI. That the complainants have approached the respondents' office in August 2014 and have communicated that the complainants were 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 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. It is submitted that on the specific request of the complainants, 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 them. 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 complainants towards development charges, but the complainants were duly informed that such charges shall be payable as and when demands will be made by the Government. The complainants are 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 complainants are trying to shift

the burden on the respondent as the real estate market is facing rough weather.

- XII. That even the sectoral location of the plot was not allocated by them. The said plot at the date of booking/provisional allotment was nothing more than a futuristic project undertaken to be developed by the respondent after the approval of zoning plans and completion of certain other formalities. A plot in a futuristic project with an undetermined location and delivery date cannot be said to be a plot purchased for residential use by any standards. Therefore, the payment made by the complainants towards the said plot cannot be said to be made towards the plot purchased for residential use instead it was a mere investment in the futuristic project. The complainants therefore only invested in the said plot so that the same can be used to derive commercial benefits/gains.
- XIII. That therefore the complainants cannot be said to be genuine consumers 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.
- XIV. That the complainants have knocked at the doors of this Hon'ble Commission for recovery of their investments under the disguise of a "genuine Consumer". That bare reading of the complaint makes it apparent that the complainants are not consumers within the lines of the Consumer Protection Act but mere investors who intends to recover the amounts paid by them along

with extracting huge amounts of interest from the respondent in a futuristic project. The complaint is a malafide attempt by the complainants to abuse the forum of this authority for recovery of their investments.

- XV. That this is a case where they have booked a plot admeasuring 300 sq. yards each in the future potential project in "Ramprastha City" in the year 2014 against which a tentative registration was issued after a payment of Rs.1,37,70,000/- for each plot and it was also mentioned that a specific plot number shall be earmarked once the zoning plans have been approved by the concerned authorities. The complainants have been made clear about the terms and conditions at the time of booking of the plot itself.
- XVI. Statement of objects and reasons as well as the preamble of the said Act categorically specify the objective behind enacting the said Act to be for the purpose of protecting the interests of consumers in the real estate sector. However, the complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the Act of 2016. The complainant is only an investor in the present project who has purchased the present property for the purposes of investments/commercial gain. The complaint is a desperate attempt of the complainant to harass the respondent and to harm the reputation of the respondent.
- XVII. That the complainants have concealed its own inactions and defaults since the very beginning. They have deliberately concealed the material fact that the complainants are 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.

- XVIII. That the respondents had to bear with the losses and extra costs owing due delay of payment of developmental charges, Government charges (EDC & IDC), PLC and interest free maintenance security (IFMS) 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 respondents constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainants.
- XIX. That the complainants have been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondents into agreeing with the unreasonable demands of the complainants. The reality behind filing such complaint is that the complainants have resorted to such coercive measures due to the downtrend of the real estate market and by way of the present complaint, is only intending to extract the huge amounts in the form of exaggerated interest.
- XX. 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 complainants had indirectly raised the question of approval of zoning plans which is beyond

the control of the respondent and outside the purview of this authority and in further view of the fact the complainants had knowingly made an investment in a future potential project. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.

XXI. That the complainant's primary prayer for handing over the possession of the said plot is entirely based on imaginary and concocted facts by the complainants and the contention that the complainants were obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainants had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated July, 2008 was made by the complainants towards a *future potential project* of the respondent and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainants; hence the complaint does not hold any ground on merits as well.

XXII. That the respondents have applied for the mandatory registration of the project with the authority but however the same is still pending for approval on the part of the authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under this

authority. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under this authority for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondents. This by any matter of fact be counted as a default on the part of the respondent.

XXIII. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to them 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 documents in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said plot. Hence the complaint is liable to be dismissed on this ground as well.

XXIV. That the complainants have approached the respondent, it was made unequivocally clear to the complainants that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land; and ii) specific plot with preferred location can be demarcated only when the government releases the zoning

plans applicable to the area Village Basai, Gadauli Kalan, Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainants. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural plot of the respondent.

XXV. The projects in respect of which the respondents have obtained the occupation certificate are described as hereunder: -

S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received
3.	Edge Tower I, J, K, L, M Tower H, N Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G)	400 160 80 640	OC received OC received OC received 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

The respondents have raised a preliminary submissions/objection the authority has no jurisdiction to entertain the present complaint. The

objection of the respondents 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

8. 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

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)(a)

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.

9. 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 respondents

F.I Objection regarding entitlement of DPC on ground of complainants being investors.

10. The respondents have taken a stand that the complainants are the investor and not consumer, therefore they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority 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 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 plot buyer's agreement, it is revealed that the complainants are buyer and they have



paid total price of Rs.1,37,70,000/- 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 complainant, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G. I Direct the respondent to pat delayed possession charges from the due date of possession till actual handing over the possession.

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

"Section 18: - Return of amount and compensation

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

.....

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

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

"11. SCHEDULE FOR POSSESSION

*"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 charges due and payable according to the payment plan.***

(a)

(b)

(c) **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, the company shall pay compensation to the intending Allottee(s) calculated at the rate of Rs.90/- per sq. yard. Per month on the full area of the Said Plot which both parties have agreed is just and equitable estimate of the damages that the intending Allottee(s) may suffer and the intending Allottee(s) agrees that he/they shall not have any other claims/rights whatsoever. The adjustment

of compensation shall be done at the time of execution of the conveyance deed.”.”

13. 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.
14. **Due date of handing over possession and admissibility of grace period:** - The respondent has submitted that the proposed estimated time of handing over the possession of the said plot was 30+6 months i.e., 36 months from the date of execution of plot buyer agreement dated



10.01.2015 which comes out to be 10.01.2018 and not 30 months from the date of the agreement. 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 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.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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.

16. 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.

17. 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., 28.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

18. The definition of term 'interest' as defined under section 2(z a) 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;"*

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.

20. 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 10.01.2015, 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 10.07.2017. 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 10.07.2017. 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 their obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such the allottees shall be paid, by the promoters, interest for every month of delay from due date of possession i.e., 10.07.2017 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority

21. 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 each of the complainant(s) against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 10.07.2017 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 07.07.2017 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 promoters to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not the part of the agreement.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the



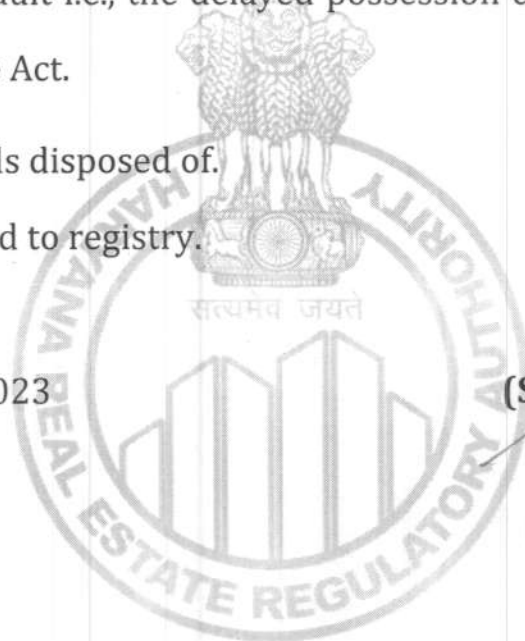
physical possession of the subject unit, within a period of two months of the completion certificate.

- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which are the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

22. Complaint stands disposed of.

23. File be consigned to registry.

Dated: 28.07.2023




(Sanjeev Kumar Arora)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram