

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

**Date of decision: 04.10.2023**

| NAME OF THE BUILDER |              | RAHEJA DEVELOPERS LIMITED.  |  |
|---------------------|--------------|---|--|
| PROJECT NAME        |              | "RAHEJA Revanta"  |  |
| S. No.              | Case No.     | Case title  | APPEARANCE   |
| 1.                  | CR/1481/2022 | Neetu Bhatnagar and Manish Anand<br>V/s<br>M/s Raheja Developer Limited | Varun Chugh Advocate<br>and<br>Garvit Gupta Advocate |
| 2.                  | CR/1483/2022 | Shweta Jain and Abhishek Jain<br>V/s<br>M/s Raheja Developer Limited    | Varun Chugh Advocate<br>and<br>Garvit Gupta Advocate |
| 3.                  | CR/1489/2022 | Kunal Singh Sandhu<br>V/s<br>M/s Raheja Developer Limited               | Varun Chugh Advocate<br>and<br>Garvit Gupta Advocate |

**CORAM:**

Ashok Sangwan

**Member**

**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Raheja Revanta" (residential group housing colony) being developed by the same respondent/promoter i.e., M/s Raheja Developers Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, possession along with delayed possession charges along with interest and other.
  3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

|   |   |
|---|---|
| <b>Project Name and Location</b>            | "Raheja Revanta", Sector 78, Gurugram, Haryana.   |
| <b>Possession Clause: -</b>                 |   |
| <b>4.2 Possession Time and Compensation</b> |   |
|   | <i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within thirty-six (36) months in respect of 'TAPAS' independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and</i> |



*subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

**(Emphasis supplied)**

| Sr. No | Complaint No., Case Title, and Date of filing of complaint  | Reply status                 | Unit No.  | Date of execution of agreement to sell           | Due date of possession   | Total Consideration / Total Amount paid by the complainants  | Relief Sought  |
|--------|---|------------------------------|---|--|--|--|--|
| 1.     | CR/1481/2022<br><br>Neetu Bhatnagar and Manish Anand V/s M/s Raheja Developer Limited<br><br>Date of Filing of complaint 01.04.2022 | Reply received on 14.03.2022 | IF43-02, 1 <sup>st</sup> floor, Tower /block - IF43<br><br>area admeasuring 2372.450 sq. ft. (super area)<br><br>(Page no. 19 of the complaint) | 16.06.2012<br><br>(Page no. 17 of the complaint) | 16.12.2015<br><br><b>(Note: - 36 months from date of agreement i.e., 23.05.2012 + 6 months grace period)</b> | TSC: - Rs.1,31,99,815/-<br><br>AP: - Rs.1,13,37,826/-<br><br>(as per customer ledger dated 17.03.2017 at page no. 60 of complaint) | 1. Possession along with delayed possession charges<br><br>2. Litigation charges |
| 2.     | CR/1483/2022<br><br>Shweta Jain and Abhishek Jain V/s   | Reply received on 14.03.2023 | IF45-02, 1 <sup>st</sup> floor, Tower /block - IF45<br><br>area admeasuring   | 23.05.2012<br><br>(Page no. 17 of the complaint) | 23.11.2015<br><br><b>(Note: - 36 months from date of agreement i.e., 23.11.2015)</b>                         | TSC: - Rs.1,33,17,551/-<br><br>AP: - Rs.1,15,43,576/-  | 1. Possession along with delayed possession charges                              |



|    |   |                              |   |  |   |  |  |
|----|---|------------------------------|---|--|---|--|--|
|    | M/s Raheja Developer Limited  |                              | suring 2372.450 sq. ft<br><br>(Page no. 19 of the complaint)  |  | + 6 months grace period)  | (as per customer ledger dated 17.04.2020 at page no. 61 of complaint)  | 2. Litigation charges  |
| 3. | CR/1489/2022<br><br>Kunal Singh Sandhu V/s M/s Raheja Developer Limited<br><br>Date of Filing of complaint 01.04.2022 | Reply received on 14.03.2023 | C-411, 41 <sup>st</sup> floor, Tower/block - C<br><br>area admeasuring 1623.330 sq. ft.<br><br>(Page no. 17 of the complaint) | 11.05.2012<br><br>(Page no. 15 of the complaint) | 11.11.2016<br><br>(Note: - 48 months from date of agreement i.e., 11.11.2016 + 6 months grace period) | TSC: - Rs.1,17,38,755/-<br><br>AP: - Rs.1,07,92,246/-<br><br>(As per customer ledger dated 10.12.2021 at page no. 59 of complaint) | 1. Possession along with delayed possession charges<br><br>2. Litigation charges |

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.



5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1481/2022 Neetu Bhatnagar and Manish Anand V/s M/s Raheja Developer Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/1481/2022 Neetu Bhatnagar and Manish Anand V/s  
M/s Raheja Developer Limited.**

| S.N. | Particulars                          | Details  |
|------|--------------------------------------|--|
| 1.   | Name of the project                  | "Raheja Revanta", Sector 78, Gurugram, Haryana     |
| 2.   | Project area                         | 18.7213 acres                                      |
| 3.   | Nature of the project                | Residential group housing colony                   |
| 4.   | DTCP license no. and validity status | 49 of 2011 dated 01.06.2011 valid up to 31.05.2021 |
| 5.   | Name of licensee                     | Sh. Ram Chander, Ram Sawroop and 4 Others          |



|     |  |   |
|-----|--|---|
| 6.  | RERA Registered/ not registered        | Registered vide no. 32 of 2017 dated 04.08.2017   |
| 7.  | RERA registration valid up to          | 04.02.2023<br>5 Years from the date of revised Environment Clearance  |
| 8.  | Unit no.                               | IF43-02, 1 <sup>st</sup> floor, Tower/block- IF43<br>(Page no. 19 of the complaint)   |
| 9.  | Unit area admeasuring                  | 2372.450 sq. ft.<br>(Page no. 19 of the complaint)  |
| 10. | Allotment letter                       | 16.06.2012<br>(Page no. 14 of the complaint)  |
| 11. | Date of execution of agreement to sell | 16.06.2012<br>(Page no. 17 of the complaint)  |
| 12. | Possession clause                      | <b>4.2 Possession Time and Compensation</b><br><i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form &amp; Agreement to sell. In</i> |



|     |  |   |
|-----|--|---|
|     |  | <i>the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay..... "</i>   |
| 13. | Grace period   | <b>Allowed</b><br>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2015. As per agreement to sell, the construction of the project is to be completed by June 2015 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b> |
| 14. | Due date of possession   | 16.12.2015<br>(Note: - 36 months from date of agreement i.e., 16.06.2012 + 6 months grace period)   |
| 15. | Total sale consideration as per customer ledger dated 17.03.2017 at page no. 60 of complaint | Rs.1,31,99,815/-  |
| 16. | Amount paid by the complainant as per customer ledger dated                                  | Rs.1,13,37,826/-  |

|     |   |                             |
|-----|---|-----------------------------|
|     | 17.03.2017 at page no. 60 of complaint  |                             |
| 17. | Occupation certificate /Completion certificate                                | Not received                |
| 18. | Offer of possession   | Not offered                 |
| 19. | Delay in handing over the possession till date of this order i.e., 09.08.2023 | 7 years 7 month and 24 days |

### **B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint: -
- I. That, the complainants were allotted a unit bearing no. IF 43-02, 1<sup>st</sup> floor admeasuring 2372.45 sq. ft. in the project named "Raheja Revanta" at Sector-78, Gurugram vide allotment letter dated 16.06.2012. Thereafter, a builder buyer agreement was executed between the parties on 16.06.2012 for a total sale consideration of Rs.1,31,99,815/- and they have paid an amount of Rs.1,13,7826/- in all.
  - II. That as per the terms of the said agreement the said agreement the respondent was obligated to handover possession of the unit within a period of 36 months from the date of signing the buyer's agreement with a further grace period of another 6 months.
  - III. That, the said buyer's agreement is totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent.
  - IV. That, the complainants, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent and has paid 86% of the total cost of the property. The





respondent had promised to complete the project by June 2015 excluding the grace period of six months, but the possession of the property has still not been offered which is resulting in extreme kind of mental distress, pain and agony to the complainants. In fact, the respondent vide its letter dated 22.02.2017 had communicated a revised timeline to complete the project and apply for occupation certificate by 4<sup>th</sup> quarter of 2018 but has miserably failed to meet its own timeline and at present the project is far from completion.

- V. That, the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondent had committed gross violation of the provisions of section 18 (1) of the Act by not handing over the timely possession of the floor in question and not giving the interest and compensation to the buyer as per the provisions of the Act.
- VI. That, the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. Therefore, the complainants are seeking direction to the respondent to handover the physical possession of the property in question in a time bound manner besides making the payment towards delayed possession interest @18% p.a. for inordinately delaying the handing over of the possession of the property in question.

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

9. The complainant has sought following relief(s)



- a. Direct the respondent to handover physical possession of the unit along with delay possession charges.
  - b. Direct the respondent to pay a sum of Rs.50,000/- towards cost of litigation.
10. 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.**

11. The respondent contested the complaint on the following grounds: -
- i. That the agreement to sell was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Although the provisions of the RERA Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project vide registration no. 32 of 2017 dated 04.08.2017 with the Authority.
  - ii. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 60 of the booking application form and clause 14.2 of the buyer's agreement.
  - iii. That the complainant had applied for allotment of a plot in the project named "Raheja's Revanta" at Sector 78, Gurgaon Haryana vide his booking application form. Thereafter, a buyer's agreement dated 16.06.2012 was



- executed between the parties for unit no. IF-4302 and the complainant agreed to be bound by the terms contained therein.
- iv. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement as stated in clause 21 of the booking application form and clause 4.2 of the buyer's agreement.
  - v. That despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. Thus, the respondent cannot be held liable on account of non-performance by the concerned governmental authorities.
  - vi. That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known to the complainant from the very inception. It is submitted that non-availability of the infrastructure facilities is beyond the control of the respondent and the same also falls within the ambit of the definition of 'Force Majeure' condition as stipulated in clause 4.4 of the buyer's agreement.
  - vii. That furthermore two high tension cable lines were passing through the project site which were clearly shown and visible in the zoning plan dated 06.06.2011. Hence, the respondent got the overhead wires shifted underground at its own cost and only after adopting all necessary processes and procedures and handed over the same to the HVPNL and



the same was brought to the notice of District Town Planner vide letter dated 28.10.2014 requesting to apprise DGTCP, Haryana for the same.

- viii. That as multiple government and regulatory agencies and their clearances were involved/required and frequent shut down of the high-tension supplies was involved, it took considerable time/efforts, investment and resources which falls within the ambit of the force majeure condition. Further, the GMDA, Office of Engineer-VI, Gurugram vide letter dated 3.12.2019 has intimated the respondent that the land of sector dividing road 77/78 has not been acquired and sewer line has not been laid. So, the respondent has written on several occasions to the Gurugram Metropolitan Development Authority (GMDA) to expedite the provisioning of the infrastructure facilities at the said project site so that possession can be handed over to the allottees. However, the Authorities have paid no heed to or request till date.
- ix. That the construction of the tower in which the unit allotted to the complainant is located is 80% complete and the respondent shall hand over the possession of the same to the complainant after its completion subject to the complainant making the payment of the due installments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell and due to the above-mentioned conditions which were beyond the reasonable control of the respondent, the construction of the project in question has not been completed and the respondent cannot be held liable for the same.



- x. That the construction of the tower in which the floor is allotted to the complainant is located already complete and the respondent shall hand over the possession of the same to the complainant after getting the occupation certificate subject to the complainant making the payment of the due installments amount as per terms of the application and agreement to sell.
- xi. That the respondent cannot be held responsible for no fault of theirs. There is no failure on the part of the respondent to hand over the possession of the plot as per the agreement to sell. Furthermore, the Hon'ble Punjab and Haryana High Court vide its order dated 12.01.2023 in CWP no. 609 of 2023 has directed the State of Haryana not to take any coercive steps against the respondent till 20.07.2023.
12. 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 based on these undisputed documents and submission made by the complainants.

**E. Jurisdiction of the authority**

13. 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**

14. 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**

15. 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)**

*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.*

16. 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 complainant(s) at a later stage.

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

**F.I. Objections regarding the complainant being investor.**

17. The respondent has taken a stand that the complainants are investors and not consumers, 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 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 preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers, and they have paid total price of **Rs.1,13,37,826/-** 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;"*

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are



allottee(s) as the subject unit was allotted to 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 investor are not entitled to protection of this Act also stands rejected.

**F. II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

19. Another objection raised the respondent 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 flat buyer's agreement 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 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."*

20. Also, in appeal no. 173 of 2019 titled **as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15*

*h*



*of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

21. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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.

**F.III Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.**

22. The agreement to sell entered into between the two side on 16.06.2012 contains a clause 14.2 relating to dispute resolution between the parties.

The clause reads as under: -

*"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the*



*concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".*

23. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.
24. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and



builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

...

*56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

25. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on**

**10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

26. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.



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

**G. I Direct the respondent to handover physical possession of the unit and to pay delay possession charges.**

27. In the present complaint, the complainants intends 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."*

28. As per article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within** thirty-six (36) months in respect of 'TAPAS' Independent Floors and **forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.** The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit:*

✓



*provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....".*

29. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government /regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
30. **Due date of handing over possession and admissibility of grace period:**  
As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period, in case the construction is not complete within the time frame specified. It is a matter of fact that the respondent has not



completed the project in which the allotted unit is situated and has not obtained the occupation certificate by May 2016. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.

**31. Payment of delay possession charges at prescribed rate of interest:**

Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

32. 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.

33. Taking the case from another angle, the complainant-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period





of such delay and whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee 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 buyer's. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumer/allottee in the real estate sector. The clauses of the buyer's agreement entered 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 type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

34. 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., 04.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
35. 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;"*

36. 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 her in case of delayed possession charges.
37. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell executed between the parties on 16.06.2012, the possession of the subject unit was to be delivered within 36 months from the date of execution of this agreement. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 16.12.2015. The respondent has failed to handover possession of the subject unit 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 16.06.2012 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

38. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 16.12.2015 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.

**G.II To pay an amount of Rs.50,000/- towards the cost of litigation.**

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

**F. Directions of the authority**

40. 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 till actual handing over of possession or offer of possession plus two months after obtaining occupation 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 due date of possession of each case till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
- iv. 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 him 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 occupancy certificate.
- v. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- 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 is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
42. The complaints stand disposed of.
43. Files be consigned to registry.

Dated: 04.10.2023

**HARERA**  
**GURUGRAM**

**(Ashok Sargwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram