BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**6847 of 2022**
First Date of Hearing:	**22.02.2023**
Order reserved on:	**17.08.2023**
Order Pronounced on:	**21.09.2023**

1. Sh. Ashish Arora
2. Smt. Garima Bhatia
3. Smt. Kamlesh Arora

All RR/o: - H. No.-202, Laxmi Apartments, Plot No. GH-4, Sector-10A, Gurgaon- 122001 **Complainants**

Versus

M/s Ramprashtha Promoters and Developers Private Limited.
Regd. Office at: C-10, C Block, Market, Vasant Vihar, New Delhi- 110057
Corporate Office at: - Plot No. 114, Sector-44, Gurugram-122002 **Respondents**

CORAM:
Shri Vijay Kumar Goyal Member

APPEARANCE:
Sh. Sukhbir Yadav (Advocate) Complainants
Ms. R Gayatri Mansa (Advocate) Respondents

ORDER

1. The present complaint dated 27.10.2022 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation

and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Skyz", Sector 37C, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	102000 sq. mt.
4.	Nature of the project	Group housing complex
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others
7.	Date of approval of building plans	12.04.2012

		[As per information obtained by planning branch]	
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]	
9.	RERA Registered/ not registered	**Registered vide no. 320 of 2017 dated 17.10.2017**	
10.	RERA registration valid up to	31.03.2019	
11.	Extension applied on	26.03.2019	
12.	Extension certificate no.	**Date**	**validity**
		HARERA/GGM/REP /RC/320/2017/EXT /122/2019 In principal approval on 12.06.2019	30.12.2020
13.	Unit no.	1003, 10th floor, tower/block- G (Page no. 32 of the complaint)	
14.	Unit area admeasuring	2025 sq. ft. (Page no. 32 of the complaint)	
15.	Allotment letter	11.07.2013 (Page no. 65 of the complaint)	
16.	Date of execution of apartment buyer agreement	14.07.2012 (Page no. 28 of the complaint)	
17.	Possession clause	**15. POSSESSION** **(a) Time of handing over the Possession**	

		Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over ***the possession of the Apartment by 31/08/2014 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.*** **(Emphasis supplied)** *(Page no. 42 of the complaint)*
18.	Due date of possession	31.08.2014 [As per mentioned in the buyer's agreement]
19.	Grace period	Not utilized
20.	Total sale consideration	Rs.73,57,125/- (As per payment plan at page 58 of complaint)
21.	Amount paid by the complainant	Rs.66,50,351/- (As per receipt information at page no. 86 of the complaint)
22.	Date of endorsement	26.06.2013 (Page no. 59 of the complaint)

23.	Occupation certificate /Completion certificate	Not received
24.	Offer of possession	Not offered
25.	Delay in handing over the possession till date of this order i.e., 17.08.2023	8 years 11 months and 17 days

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the complainants are respectable citizen of India. The respondent through its representative approached the complainants and represented that residential project name "**Skyz**" would effectively serve their residential purpose and family and has best of the amenities.

II. That the respondent claimed that it had obtained license from the Director General, Town & Country Planning, Haryana (DTCP) for development of the project land into group housing complex comprising of multi-storied residential apartments in accordance with law.

III. That based on aforementioned representation and enquiries made, the complainants submitted application for allotment of unit no. C-1003 proposed to be built on 10th floor of Tower-G in the impugned project. The complainants had opted for installment plan.

Thereafter, both the parties entered into agreement i.e., apartment buyer's agreement dated 14.07.2012 for the sale of said unit wherein the total consideration for the said unit no. C-1003 was fixed as Rs.73,57,125/-. That the respondents in terms of the application of the complainants executed the agreement for sale and agreed to the terms and conditions as set forth under this agreement.

IV. That as per buyer's agreement, the respondent agreed to sell/ convey/transfer the said apartment unit no.-1003, 10th floor, Tower – G in the complex with the right to exclusive use of parking space for an amount of Rs.73,57,125/-, calculated at Rs.3633/- per sq. ft. super area, which includes basic sale price, car parking charges, external development charges and infrastructure development charges, preferential location charges and interest free maintenance security and in addition to, club membership, electricity connection, as per payment plan annexed to the agreement as annexure - "II", plus applicable taxes.

V. That as per clause 15(a) of the buyer's agreement, the possession date for the impugned unit was agreed to be 31.08.2014, with a grace period of 120 days for applying and obtaining the occupancy certificate. Further, clause 14 of said agreement also stipulates a penal interest @1.5% per month (18% per annum compounded monthly) for any delay in payment of installments made by the

complainants. The agreement further stipulates under clause 17 that the respondent, if failed to deliver the possession of the impugned unit within 6 months from the date of intimation of possession (it may further extended to grace period of 120 days) and subject to the force majeure conditions would pay compensation @ Rs.5/- per sq.ft. of the super area per month for the entire period till the date of handing over the possession. In other words, the respondent would be liable for delay in possession after 10 months from the date of intimation of such possession as may be made depending upon its own sweet will. The said compensation clause is *ex facie* discriminatory in comparison to clause 14(a) of the agreement and amounts to unfair trade practices in view of catena of judgments of Hon'ble National Consumer Disputes Redressal Commission. Further, the said compensation clause is also in direct conflict with the Act, 2016 and rules made thereunder. Therefore, the clause 17 of agreement is *non est* in law in view of the fact that it is repugnant to the explicit statutory provision and to that extant clause 17 is severable from other clauses of agreement in accordance with clause 30 of the agreement. The complainants crave leave of authority to produce and rely upon relevant judgments at the time of oral hearing as may be required.

VI. That the complainants in pursuant to the agreement for sale made a total payment of Rs. 66,50,351/- by different modes as per the payment plan annexed to the agreement. Details of receipt of said payments are reflected in the statement of account issued by respondent/promoter. They have paid almost **90%** of the Sale consideration towards the cost of the said unit in the said complex including costs towards other facilities. Despite the said payments, the respondents failed to deliver the possession in agreed timeframe (i.e., 31.08.2014) for reasons best known to them and the respondents never bothered to intimate rhymes and reasoning for the delay to the complainants. Therefore, the respondents have the breached the sanctity of the agreement for sale.

VII. That after coming in force of the Act, 2016 and applicable rules, respondents applied for registration of the impugned project before this authority in accordance with law. The authority while discharging its regulatory/administrative functions granted the registration to the impugned real estate project "The Skyz Tower" **vide regd. no. 320 of 2017 dated 17.10.2017** on terms and condition as enumerated in the said registration certificate.

VIII. That a new date of handing over the possession as 30.03.2019 was granted to the respondents vide aforementioned registration certificate subject to the right of the allottee(s) to withdraw from the

project in accordance with section 18 of the Act, 2016. However, the respondents do not seem to honor the said date of handing over of possession as granted by the authority since they have not applied for occupancy certificate of impugned tower till today. It is matter of knowledge that around three to four months are required to process and get the occupancy certificate from the appropriate authority. Therefore, the respondents seem to be a continuous and recurring defaulter in the habit of making false claims to dupe the hard-earned money of homebuyers like the complainants.

IX. That the complainant(s) paid IDC/EDC charges as per the prevailing rate at the time of entering into agreement. However, the said EDC/IDC charges were reduced by the state government subsequently in 2011.Therefore, the respondents were under a legal obligation to refund the excess EDC/IDC charges in view of the said reduction, but the respondents have not done so till now. Henceforth, the respondents shall reverse/return such excess EDC/IDC charges to the complainant(s) at the earliest.

X. That the respondents are continuous and recurring defaulter, and no respite is available against such a recurring either on justiciable or equitable ground. Any further extension to them will amount to travesty of justice as respondent's actions seems to be taken in bad

faith and with ill motive to misappropriate complainants hard earned money.

XI. That there is more than 8 years of unexplained and inordinate delay in handing over the possession by the respondents to the complainants without any sign of them meeting the future deadline. Therefore, the complainants have genuine grievance which require the intervention of the authority in order to do justice with them.

XII. That the complainants require the possession of the property immediately along with the interest for every month of delay till the handing over of the possession, at the prescribed rate. The complainant(s) had paid the full amount of consideration as per agreement within the stipulated time without any defaults in accordance with agreement and thus entitled to the interest at prescribed rate for the unreasonable delay in delivering the possession of impugned flat by the respondent.

C. Relief sought by the complainants:

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

I. Immediate deliver the possession of the said unit along with 18% per annum interest compounded quarterly for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

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

i. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.

ii. That the present complaint has been filed by the complainants before this authority for possession along with interest and legal investment made by them in one of the plots in the said project "Ramprastha City". In this behalf, it is most respectfully submitted that the authority is precluded from entertaining the present complaint due lack of jurisdiction of this authority.

iii. That the complainants have now filed a complaint in terms of the Haryana Real Estate (Regulation & Development) Amendment Rules, 2019 under the amended Rule 28 in the amended 'Form CRA' and are seeking the relief of possession, interest, and compensation under section 18 of the Act. It is most respectfully submitted in this behalf that the power of the appropriate Government to make rules under

Section 84 of the said Act is only for the purpose of carrying out the provisions of the said Act and not to dilute, nullify or supersede any provision of the said Act.

iv. That without prejudice to the above, it is further submitted that the complainants are not "Consumers" within the meaning of the Consumer Protection Act, 2019 since their sole intention was to make investment in a futuristic project of the respondent only to reap profits at a later stage when there is increase in the value of flat at a future date which was not certain and fixed. Neither there was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.

v. That the complainants having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project. They have no intention of using the said flat for their personal residence or the residence of any of their family members. If the complainants had such intention, they would not have invested in futuristic project. The sole purpose of the complainants was to make profit from sale of the flat at a future date. Now since the real estate market is seeing downfall, the complainants cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. It is submitted that

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

vi. That the complainants have not intentionally filed their personal declarations with respect to the properties owned and/or bought/sold by them at the time of booking the impugned flat 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.

vii. That the complainants have approached the respondent office in October/November 2010 and have communicated that the complainants interested in a project which is "not ready to move" and expressed their interest in a futuristic project. It is submitted that the complainants were not interested in any of the ready to move in/near completion projects. It is submitted that on the specific request of the complainants, the investment was accepted towards a futuristic project. Now, the complainants are trying to shift the burden on the respondent as the real estate market is facing rough weather.

viii. The complainants are investors, who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds. This authority has

no jurisdiction howsoever to entertain the present complaint as the complainants have not come to this authority with clean hands and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose. The complainants not being 'consumers' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the Act, of 2016. This has been the consistent view of the National Consumer Disputes Redressal Commission.

ix. Therefore, the complainants cannot be said to be genuine consumer by any standards; rather the complainants are mere investors in the futuristic project. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.

x. That the complainants have not approached this authority with clean hands and concealed the material fact that they are defaulters, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the statement of account. Due the lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited caused the

present unpleasant situation. It is due to the default of the complainants, that the allotment could not have been carried out

xi. That further, even all through these years, the complainants have never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years only hints at the malafide intentions of the complainants. Apparently, the complainants have been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property.

xii. That the respondent had to bear with the losses and extra costs owing due delay of payment of installments on the part of the complainants for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainants.

xiii. That from the initial date of booking to the filing of the present complaint, the complainants have never raised any issues or objections. Had any valid issue been raised by complainants at an earlier date, the respondent would have, to its best, endeavored to

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

xiv. That further, the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainants had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of consumer courts and in further view of the fact the complainants had knowingly made an investment in a future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.

xv. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in

further detail herein below. The complainants while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting document in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said flat. Hence the complaint is liable to be dismissed on this ground as well.

xvi. The respondent/promoter was owner of vast tracts of undeveloped land in the revenue estate of Villages Basai, Gadauli Kalan and falling within the boundaries of Sectors 37C and 37D Gurugram also known as Ramprastha City, Gurugram.

xvii. That thereafter Ministry of Finance, Government of India in the wake of COVID-19 pandemic has invoked *Force Majeure* and thereby extended the timelines for completion of real estate projects by 6 months period starting from February 2020.

xviii. That the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainants/allotment offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said Rules, has been executed

between both the parties. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 14.07.2012, executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for possession, refund, interest and compensation, as provided under Sections 12, 14, 18, and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of the said Act and the said Rules. Thus, in view of the submissions made above, no relief can be granted to the complainants.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has

territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F. I Objection regarding the complainants being investors.

11. The respondent has taken a stand that the complainants are the investors and not consumer. Therefore, they have not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and paid

total price of Rs. 66,50,351/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

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

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

12. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the booking application form executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 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."

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

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective

departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants

G. I Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

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

> *"Section 18: - Return of amount and compensation*
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.""*
>
> *(Emphasis supplied)*

16. Clause 15(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

> *"15. POSSESSION*
>
> *(a) Time of handing over the possession*
> *Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by **31.08.2014** the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."*

17. The authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

18. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate 18% p.a. 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.*

20. 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.

21. Taking the case from another angle, the complainants/allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @18% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees or the promoter. The rights of the parties are to be

balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

22. 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., 17.08.2023 is **8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%.**

23. 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;"*

24. 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 complainants in case of delayed possession charges.

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The authority has observed that the apartment buyer agreement was executed on 14.07.2012 and the due date of possession was specifically mentioned in the apartment buyer agreement as 31.08.2014. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.08.2014. The respondent has failed to

handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 31.08.2014 till the handing over of the possession, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 31.08.2014 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.

ii. The arrears of such interest accrued from 31.08.2014 till the date of order by the authority shall be paid by the promoter to the allottees

within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The respondents shall not charge anything from the complainants which is not the part of the apartment buyer's agreement

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

27. Complaint stands disposed of.

28. File be consigned to registry.

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.09.2023