



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

Complaint no. :	4810 of 2022
Date of complaint :	21.07.2022
Order pronounced on:	14.09.2023

Rinku Khanchi
Satyavan Khanchi
Both RR/o: - 602, Asia House Kasturba Gandhi Marg,
New Delhi.

Complainants

Versus

M/s S.S. Group Private Limited.
Regd. Office at: - 4th floor, The Plaza, M.G. Road,
Gurugram.

Respondent

CORAM:

Sh. Vijay Kumar Goyal
Sh. Ashok Sangwan

**Member
Member**

APPEARANCE:

Sh. Rajan Sharma (Advocate)
Sh. Rahul Bhardwaj (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the

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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	"The Leaf", Sector 85, Gurugram
2.	Nature of project	Group Housing Complex
3.	RERA Registered/ Not Registered	Registered 23 of 2019 dated 01.05.2019
4.	DTPC License no.	81 of 2011 dated 16.09.2011
	Validity upto	15.09.2024
	Licensed area	11.9 Acre
5.	Unit no.	10B, 10 th floor, building 8 [page no. 26 of complaint]
6.	Unit measuring	2280 Sq. Ft. (Page no. 26 of complaint)
7.	Date of execution of floor buyer's agreement	23.09.2013 (Page no. 25 of complaint)
8.	Possession clause	8. Possession 8.1 Time of handing over the possession 8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace

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		period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex.
9.	Date of endorsement	13.05.2016
10.	Due date of possession	23.09.2016 (Calculated from the date of signing of buyer agreement) Grace period not allowed
11.	Total sale consideration	Rs. 1,22,83,200/- (Page no. 27 of complaint)
12.	Total amount paid by the complainants	Rs. 1,12,32,047/- (As per CRA)
13.	Occupation certificate dated	09.05.2022 (As per page no. 80 of reply)
14.	Offer of possession	12.05.2022 (As per page no. 83 of reply)
15.	Grace period utilization	As per the clause for possession, the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six-month (36) months or such extended period for applying and obtaining the occupation certificate in respect of the group housing complex. The promoter has not applied for occupation certificate within the time limit prescribed in the builder buyer agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore, the grace period is not allowed.

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the complainants purchased the unit from the original allottee. The buyer's agreement was already executed between the original allottee and the respondent on 23.09.2013 and consequently he was allotted unit no. 10-B, building 8, 10' floor having an area of 2280 sq. feet for a

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total consideration of Rs.1,22,83,200/- against which the original allottee paid an amount of Rs. 37,48,317/-.

- II. That the unit was transferred in the name of the complainants only when the complainants had paid an amount of Rs.11,58,973/- to original allottee and after clearing the pending charges to the tune of Rs. 30,03,033/- excluding Rs. 4,00,530/- i.e., 18 % interest on delayed payment, which was paid by original allottee, to the respondent. On 13.05.2016, the unit was transferred in the name of the complainants. The allotment letter, buyer's agreement and payment acknowledgement by the respondent are annexed herewith for the kind perusal of the court.
- III. That even at the time of transfer of the unit in the name of the complainants they were assured by the respondent that the project was a bit late but now they have expedited the construction speed and in every likelihood the project would be completed in a maximum period of 6 months. The respondent had further assured that they are known for timely completion of their projects and complete customer satisfaction and so this project also would be completed in a timely manner. Moreover, they had further said that the project is strategically located. The said project offer spacious and smartly constructed unit and would be well-equipped with all the modern amenities to cater to the needs of the customers.
- IV. That the complainants were induced by such assurances and based on the assurances made therein utilised the services of the respondent. As they were in need of space for the purpose of living for themselves, the respondent successfully induced the complainants to go for the deal. The respondent further assured the complainants that the possession

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would be made within 3 years from the date of execution of the agreement along with an extended 90 days' time, if it was not completed within time.

- V. That the complainants till date made payments of Rs.1,12,32,047/- to the respondent from their savings as well as from the home loan taken by them. After the transfer of ownership, a sum of Rs.40,00,167/- has been paid by the complainants to the respondent from their account by way of margin money as well as from the home loan account and the same is reflected in the account statement issued by the respondent.
- VI. That the respondent raised the demands and the same was paid by the complainant within time. Once the complainants had visited the site and came to know that the demand was raised in advance whereas the work as per that stage was yet to be started to which complainants asked the respondent to look into the issue and to pay the interest for advance payment for the stage, which is yet to be started. Instead of replying to the complainants the respondent ignored the repeated requests and reminders. The period of 3 years and the grace period has since expired. The complainants have been regularly making various enquiries from all the offices and later on been visiting the construction site to see the development of their property, but they were shocked to see that the work was still incomplete whereas they were time and again assured by the respondent that only some work is pending.
- VII. That the complainants from their savings have paid an amount for the unit and had also taken the loan of Rs.66,00,000/-, and for which they are paying the EMI of Rs.69,000/- approx., since 2016.
- VIII. That the ordeal the complainants have been subjected to on account of lackadaisical approach accompanied with fraudulent scheme of delayed

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construction, demand notice and accompanied with interest sought on the amount demonstrates the deficiency on the part of respondent as they chose neither to honour the terms of buyer agreement nor their words of working upon the grievances of the complainants.

- IX. That the complainants have been made to expect delivery of possession from 2016, shifting every quarter and necessitating them visiting the site where the property had to be developed, every three months since the year 2017, so that they can monitor the progress being made and not just believe false assurances and commitments of the respondent.
- X. That it is palpably clear that the respondent despite being wrong and deficient service provider has taken an amount of Rs.1,12,32,047/- from the complainants till now towards the unit in question and demanded Rs. 28,43,494/- but, has not completed their part of handing over the possession on time.
- XI. That the respondent had further raised demand of Rs. 28,43,494/-, vide letter dated 12.05.2022 to the complainants to deposit for the stage which has neither been approached nor the unit is at the stage where offer of possession can be given. Whereas the fact is that the unit is still not at the stage of possession and in absence of that the demand notice issued by the respondent is liable to be recalled/cancelled.
- XII. That the complainants lastly visited on 21.06.2022 the office of the respondent as well as construction site wherein they met the officer who on enquiries stated nothing but only made lame excuses with the view of buying time. It is now that they have realised that the respondent has only cheated the complainant as the respondent never had the intention to deliver their promises and only wanted to make the

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complainants pay the money believing the false promises and assurances of the respondent.

XIII. That from the above-mentioned facts it is palpably clear that the respondent had malafide intentions from the very inception and instead of fulfilling their part of agreement wants the complainants to function as per its whims and fancies and succumb to pressure/threat of forfeiture of his hard-earned money. That the respondent had raised the demand for payment whereas as per the payment plan the construction had not reached to that level and the advance demand by the respondent created doubt in the genuineness of the claims of the respondent and on this the complainants approached the respondent but instead of giving any satisfactory reply, they prefer to send evasive replies.

XIV. This clearly demonstrates the way in which the respondent has fraudulently exploited he complainants financially, physically as well as mentally and caused deficiency in services and defect. Therefore, the respondent is also liable to compensate the complainants for the mental, physical as well as the financial agony and hardships faced by the complainants.

C. Relief sought by the complainants:

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

- I. Direct the respondent to handover the possession of the unit and pay delay possession charge at the prescribed rate of interest.
- II. Direct the respondent to pay Rs. 1,00,000/- towards the litigation charges to the complainants.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed

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in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent/builder.

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

- i. That the apartment in question was allotted to one Mr. Bashar Saif, in September 2012 the original allottee vide an allotment letter dated 10.09.2012, a unit bearing no. 10-B, building B, 10th floor, 3 BHK having super area 2280 sq.ft. in the residential project developed by the respondent known as "The Leaf" situated in Sector 85, Village Sihi, Tehsil Manesar, District Gurgaon, Haryana.
- ii. That, the said allotment letter being the preliminary and the initial draft contained the broad terms and conditions of allotment and a payment plan for basic and primary understanding between the respondent and original allottee, to be followed by the buyer's agreement to be executed between the parties. Thereafter, immediately on 23.09.2013, the buyer's agreement was executed between the original allottee and the respondent which contained the detailed rights and obligations of the parties.
- iii. That the complainants herein are subsequent allottees who had shown their interest in buying an apartment in the respondent's project. The complainants approached the original allottee and expressed their interest in purchasing the said apartment. Subsequently, the original allottee, agreed to sell the said unit to the complainants vide a subsequent agreement to sell dated 30.04.2016 executed between the original allottee and the complainants wherein the respondent was not a party. Pursuant to the understanding and the execution of the

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subsequent agreement to sell between the original allottee and the complainants, on 13.05.2016 the unit was transferred in the name of the complainants.

- iv. That, the complainants were allotted the apartment bearing unit no. 10B, building B, 10th floor, having an approximate super area of 2280 sq.ft. of the project "The Leaf" at the basic price of Rs. 4700/- per sq.ft. and preferential location charges of Rs. 100/-per sq.ft., external development charges of Rs. 355/- per sq.ft., and infrastructure development changes of Rs.35/-per sq.ft. to be payable as per the payment plan. The sale consideration of the unit booked by the complainants was Rs.1,34,29,120/-. However, it is submitted that the sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by them at the applicable stage. It is submitted that the original allottee defaulted in making payments towards the agreed sale consideration of the flat from the very inception, i.e., after signing the allotment letter.
- v. That at the time of the transfer of the unit, the complainants were well aware of the stage of the construction of the project and even willingly opted to enter into an agreement with the respondent and therefore, the benefit of doubt would be given to the respondent and not the complainants. It can be observed by this transaction that the whole purpose of getting into the subsequent agreement with the respondent was only to gain monetary fund by means of delayed possession interest. It is well settled law that those who are well aware of the law and still go ahead in making an error or using it shall not be given any relief.

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- vi. That the complainants have no cause of action to file the complaint as the complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 23.09.2013 as well as the subsequent transfer of allotment dated 20.05.2016 by the respondent. The complainants were investors and have booked the unit in question to yield gainful returns by selling the same in the open market. The complainants does not come under the ambit and scope of the definition an allottee under section 2(d) of the Act, as the complainants are investors and booked the unit in order to enjoy the good returns from the project.
- vii. That the construction of the project was stopped on account of the NGT order prohibiting construction activity of any kind in the entire NCR by any person, private or Government Authority. Vide order dated 20.07.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.
- viii. That the time period to hand-over the possession of the unit would be considered after a co-joint reading of the clause 8.1 of the buyer's agreement as well as the date of subsequent endorsement of the unit on 20.05.2016. The time period of 36 months (plus the grace period of 90 days i.e., 3 months) would be counted and considered from the date of the execution of the endorsement documents with the complainants and not as per the terms and conditions from the buyer's agreement

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entered with the original allottee. Therefore, the date of the completion of the project therefore comes out to be 19.07.2019. In addition to this, the date of possession as per the buyer's agreement further increased to grace months of 3 months. The date of the completion of the project was further pushed due to the *force majeure* conditions i.e., due to the NGT orders and the lockdown imposed because of the worldwide covid-19 pandemic, by which the construction work all over the NCR region came to halt. That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to covid-19.

- ix. That the country again faced 2nd wave of covid-19 because of which again a partial lockdown was imposed for a period of two months by the state government which again led to the postponement in the completion of the project. In view of all the above submissions, it is pertinent to mention that the respondent is on time to complete the said project and the project at present date has been completed and accordingly, the respondent has received the occupational certificate of the project from the competent authority dated 09.05.2022. The complainants were offered possession vide a letter for offer of possession dated 12.05.2022 and an email dated 13.05.2022.
- x. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project"
- a. Time and again various orders passed by the NGT staying the construction.
 - b. The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. The

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projects of not only the respondent but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers.

- c. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.
- d. Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the respondent has no control whatsoever.
- e. Shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- f. In addition, the current Govt. has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.
- g. In July 2017, the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

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- h. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- i. Then the developers were struck hard by the two consecutive waves of the Covid-19, because of which the construction work completely came to halt. Furthermore, there was shortage of labour as well as the capital flow in the market due to the sudden lockdown imposed by the government.
- j. Lately, the work has been severely impacted by the ongoing farmers protest in the NCR as the farmers protest has caused huge blockade on the highway due to which ingress and egress of the commercial vehicles carrying the raw materials has been extremely difficult, thereby bringing the situation not in the control of the developers and thus constitutes a part of the force majeure.
- xi. That the complainants have also misrepresented that no updates regarding the status of the project were provided to him by the respondent. The complainants were constantly provided construction updates by the respondent from time to time and was well aware of the *force majeure* conditions prevailed during the course of time which led in delaying the completion of the said project in addition to the regular updates and updated images on the website of the company. Several allottees, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Despite there being a number of defaulters in the project, the respondent itself infused huge amount of funds into the project and is diligently developing the project in question.

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- xii. That the project at present date has been completed almost 90% and therefore, it would be difficult for the respondent to pay any interest on the delayed possession at this stage and the possession would be given to the complainants in next few months. At this point, the project is almost at the edge of completion and any relief cannot be given to the complainants as it would be detrimental to the interest of the respondent as well as all the other investors who have invested in the project.
- xiii. That the compensation in the form of interest on delayed possession to be paid by the respondent to the complainants at this crucial juncture would be injustice to the company and would eventually lead to an array of similarly filed frivolous and vexatious complaints asking for a similar relief, leaving the respondent without any funds to carry on the completion of the project in the interest of buyers who have already taken possession. The respondent itself has infused huge sum of funds into the project through Swamih Loan so that the project could be completed on time. Despite force majeure conditions the respondent has made all the efforts in order to complete the project in time.
- xiv. That the complainants have also concealed from the authority that the respondent being a customer centric company has always addressed the concerns of the complainants and had requested the complainants telephonically time and again to visit the office of the respondent to amicably resolve the concerns of the complainants. However, notwithstanding several efforts made by the respondent to attend to the queries of the complainants to their complete satisfaction, the

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complainants erroneously proceeded to file the present vexatious complaint before the authority against the respondents.

- xv. That the respondents had from time to time obtained various licenses and approvals and sanctions along with permits. Evidently respondents had to obtain all licenses and permits in time before starting construction. Furthermore, after the introduction of the RERA Authority, Gurgaon the respondent applied for the approval of the same which was granted and approved.
- xvi. That the complainants thus, have approached the authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the purported complainant would not have arisen and allegations levelled by the complainants are totally baseless and hence deserves dismissal.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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

F. Findings on the objections raised by the respondent.

F. I Objection regarding force majeure conditions:

10. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different

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allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 23.09.2013 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 23.09.2016. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

11. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

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12. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 23.09.2016 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding the complainants being investors.

13. The respondent has taken a stand that the complainants are the investors and not consumers. Therefore, they are 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

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price of Rs. 1,12,32,047/- 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.

14. In view of the 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 to 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 to in the Act. Thus, the contention of the promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to deliver the possession of the allotted unit and pay the delay possession charges along with prescribed rate of interest.

15. In the present case in hand the complainants are subsequent allottees. The said unit was transferred in the favour of the complainants on 13.05.2016 i.e., before the due date of handing over of possession

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(23.09.2016) of the allotted unit. As decided in **complaint no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited**, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

16. The complainants are admittedly the allottee of respondent/builder for a total sum of Rs. 1,22,83,200/-. A buyer's agreement was executed between the parties in this regard on 23.09.2013. The due date for completion of the project was fixed as 23.09.2016. So, in this way, the complainant paid a total sum of Rs. 1,12,32,047/- against the allotted unit. The occupation certificate of the project was received on 09.05.2022 and the possession was offered to the complainants on 12.05.2022.
17. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

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

.....

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

18. Clause 8 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of

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this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex

19. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is 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 fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
20. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of

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possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

21. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within a period of 36 months from the date of signing of this agreement. In the present case, the promoter is seeking 90 days as grace period for applying and obtaining occupation certificate. However, there is no material evidence on record that during the period of 90 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project or obtained during this period. So, the promoters cannot claim the benefit of grace period of 90 days. Consequently, the authority has rightly determined the due date of possession. Thus, the grace period is not allowed, and the due date of possession comes out to be 23.09.2016.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

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23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. 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., 14.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
25. 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;"*
26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.
27. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over

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possession by the due date as per the agreement. By virtue of clause 8 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of buyer's agreement i.e., 23.09.2013 and the said time period of 36 months has not been extended by any competent authority. Therefore, the due date of possession is calculated from the date of execution of buyer's agreement and the said time period of 36 months expired on 23.09.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 23.09.2016.

28. The respondent has obtained the occupation certificate on 09.05.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 23.09.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 23.09.2013 to hand over the possession within the stipulated period.
29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 09.05.022. The respondent offered the possession of the unit in question to the complainant only on 12.05.2022. So, it can be said that the complainant came to know

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about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 23.09.2016 till the date of offer of possession (12.05.2022) plus two months i.e., 12.07.2022. The complainant is further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

30. 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. 23.09.2016 till the date of offer of possession (12.05.2022) plus two months i.e., 12.07.2022; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G. II Litigation cost.

31. The complainants are also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt.*

A *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.

H. Directions of the authority

32. 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 pay interest at the prescribed rate i.e., 10.75 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 23.09.2016 till the date of offer of possession (12.05.2022) plus two months i.e., 12.07.2022; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- II. 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.
- III. The complainants are directed to pay outstanding dues, if any remains after adjusting delay possession interest within 30 days and the respondent shall handover the possession of the allotted unit

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complete in all aspects as per specifications of buyer's agreement within next 30 days and if no dues remain outstanding, the possession shall be handed over within four weeks from date of this order.

- IV. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

33. Complaint stands disposed of.

34. File be consigned to registry.

Ashok Sangwan
Member

Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2023

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