

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

Complaint no.	:	5599 of 2022
Date of filing	:	17.08.2022
Date of decision	:	29.11.2023

1. Arindam Kar
2. Mrs. Snehashree Kar

R/o: House No. 18, Sector-22A, Gurgaon-122015
(Near Gurudwara Singh Sabha Sector-22A)

Complainants**Versus**

Chirag Build Tech Pvt Ltd

Address:- Building No. 80, Sector-44,
Gurugram-122003

Respondent**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Ms. Piyanka Agarwal (Advocate)

For the complainants

Mr. Garvit Gupta (Advocate)

For the respondent

ORDER

1. The present complaint has been filed by the complainants/allottee 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount of 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Rof Anana ", sector- 95 , Gurugram
2.	Project area	8.034 Acres
3.	Nature of the project	Residential, affordable
4.	RERA Registered / not registered	Registered 184 of 2017 14.09.2017
5.	Unit no.	108 Tower A (Annexure 2-page no. 29 of the complaint)
6.	Unit admeasuring	569.243 sq. ft. (Annexure 2-page no. 29 of the complaint)
7.	Environment clearance	09.10.2017

8.	Building plans	07.12.2016
9.	Allotment letter (page 51 of reply)	24.08.2018
10.	Date of execution of Agreement for sale	31.08.2018
11.	Possession clause	5. Possession <i>5.1: The developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later</i> (Emphasis supplied).
12.	Due date of possession	09.10.2021 (Calculated from the date of environment clearance i.e., 09.10.2017 is being later)
13.	Total sale consideration	Rs 28,01,422 /- (Page 41 of complaint)
14.	Total amount paid by the complainants	Rs 28,01,422 /-
15.	Occupation certificate on	22.02.2022
16.	Offer of possession on	23.02.2022 (Annexure R-16 page 89 of complaint)

17.	Cancellation on	15.06.2022 (page 91 of reply)
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B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- That the complainants purchased a Flat (No.: A-1008) under the project ROF Ananda Sector-95 from builder Chirag Buildtech Pvt Ltd with agreed terms of payment as documented in the BBA.
 - Despite respecting every date of payment for the installment, the builder is now charging additional amount from the complainants in the name of delay penalty at the last moment while offering possession. The complainants personally visited the builders office several times and explained his wrong demand to them and resolved the matter amicably, but they were completely intent on paying no attention to our request for resolution and charging extra money at any cost which is completely unethically demanded.
 - Neither the respondent handing over the flat to the complainants nor are they going for register of the property in his name and as a result the complainants forced to pay additional rent during all these periods of intentional delay in providing us the already physically completed flat.
 - On the contrary builder has collected extra amount from the complainants prior to due time as per contractual terms from period 2018-2020 for various instalments for which he had to pay

unnecessary additional interest to bank. Hence, the complainants now wants to avail back this additional interest accrued due to fault of builder for pre-timely collection.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a. Direct the respondent to give immediate possession of the unit of the abovementioned complainants along with prescribed interest per month from the date promised for delivery of possession till the date of actual delivery of possession of unit in favour of the complainants herein in a habitable condition.
5. On the date of hearing, the authority explained to the respondent/promoters 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 by way of written reply made the following submissions:
 - a. That it is submitted that the complainants are a real estate investor who had booked the unit in question with a view to earning quick profit in a short span of time. However, it appears that his calculations have gone wrong on account of the severe slump in the real estate market and the complainants now wants to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainants cannot be allowed to succeed.

- b. That the respondent had obtained the approval on the building plans from DTCP vide letter bearing Memo no.ZP-1133/SD(BS)/2016/26738 dated 07.12.2016 and the environment clearance bearing no. SEIAA/HR/2017/659 dated 09.10.2017 from the State Environment Assessment Authority, Haryana for the project in question. Moreover, the respondent in compliance of all laws including Real Estate (Regulation and Development) Act, 2016 has registered the project in question with this Authority and this Authority after scrutiny of all the relevant documents and completing its own due diligence has issued a registration certificate bearing no. 184 of 2017.
- c. That the complainants and his wife, after checking the veracity of the said project had applied for allotment of an apartment vide their Booking Application Form on 01.08.2018. It is pertinent to mention herein that the said allotment was made by the respondent to the complainants and his wife in the second draw of lots for the project which was conducted as per the provisions laid down in the Affordable Housing Policy, 2013. It is submitted that the second draw of lots was conducted on 02.05.2018. The complainant and his wife agreed to be bound by the terms and conditions of the Booking Application Form. The complainants and his wife were aware and had admitted and accepted vide the said Booking Application form that they by the way of said application form had applied in the said project under the Affordable Group Housing Colony being developed by the respondent under the Affordable Scheme Policy and had understood all the limitations

and obligations after being provided with all the information and clarifications. The complainants were aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the said policy, law, Agreement and only after being completely satisfied about the same, had made the booking with the respondent.

- d. The complainants at the time of submitting the Booking Application form had made the payment towards 5% amount of the total cost of the unit as per the Affordable Scheme Policy, 2013. That on the basis of the application, an Agreement was sent by the respondent to the complainants and his wife. The Complainants and his wife signed the Agreement only after being fully aware of all the limitations and obligations and after being completely satisfied with the terms and conditions of the said Agreement. Thus, the Agreement for Sale was executed between the Complainants, his wife and the respondent on 31.08.2018. That since, the complainants and his wife were short on funds, they approached the respondent and requested it to issue a Permission to Mortgage to Indiabulls Housing Finance Ltd. in order to enable the bank to financially assist the complainant and his wife in making payment towards the total sale consideration of the unit. The respondent reminded the complainants about Clauses 1.21 and 2.5 of the Agreement for Sale wherein the complainants and his wife had acknowledged and admitted that regardless of availing of the loan facility, it would be the obligation and responsibility of the

- complainants and his wife to make the payment in order to ensure compliance of the terms and conditions of the Agreement for Sale.
- e. When the complainants and his wife specifically assured the respondent that they would abide by their contractual obligations of making timely payment, the respondent issued its permission to mortgage the unit in the favour of Indiabulls Housing Finance Ltd. vide letter dated 05.09.2018.
- f. That in terms of the Affordable Group Housing Policy, 2013, Booking Application Form and the Agreement, the respondent raised payment demands from the complainants and his wife. Vide demand letter dated 23.01.2020, the respondent demanded Rs. 3,54,578/- from the complainant and his wife. However, the complainants defaulted in making timely payment and the remaining amount was adjusted in the next instalment demand.
- g. That vide payment demand letter dated 19.01.2021, the respondent had sent demand letter for the net outstanding amount of Rs. 6,73,455.60. However, the said payment was made by the complainants and his wife only after a reminder email dated 07.07.2021 was sent by the respondent to the complainants and his wife.
- h. That the respondent demanded Rs. 1,87,727.84 vide demand dated 23.02.2022. However, the complainant and his wife failed to remit the due amount. The respondent completed the construction of the tower in which the unit allotted to the complainants and his wife was located and offered the possession to the respondent vide offer

of possession dated 23.02.2022. The complainant and his wife were required as per the said offer of possession to make complete payment towards the due amount as well as to complete the documentation formalities.

- i. The complainants and his wife were aware that as per several clauses of the Booking Application Form and Clauses 1.4 and 2.2 and 5.1 of the Agreement, timely payment of the installment amount was the essence of the allotment. It was understood vide Clause 1.13 of the Agreement and as per Clause 5(iii)(i) of the Affordable Scheme Policy, 2013, that if the allottee fails to make the payment towards the demanded amount, then the respondent would be entitled to terminate the allotment by issuing the cancellation letter. On account of defaults committed by the complainant and his wife, the respondent was left with no other choice but to terminate the allotment of the complainants and his wife by issuing the cancellation letter dated 15.06.2022. The complainants and his wife are left with no right, title or lien in the unit after the said cancellation. The said cancellation has been done by the respondent strictly as per the Agreement and the said policy and the same is valid in the eyes of law.
7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance

of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.1 Objections regarding complainants are investor.

12. The respondent submitted that the complainants are an investor and not a consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
13. The authority observes 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 and 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 under section 31 of the Act, 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 buyer's agreement, it is revealed that the complainants are an allottee/buyer and they had paid total price of Rs. 28,01,422/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person

who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, 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 complainants-allottees being investors are not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainants.

G.I Possession and delay possession charges

15. In the present complaint, the complainants are contending that the subject unit bearing no. 108, Tower-A in the project "ROF Anana, Sector-95, Gurugram " was allotted by the respondent in favour of the complainants vide allotment letter dated 24.08.2018. Thereafter, the flat buyer agreement was executed between the parties on 31.08.2018. Further, the counsel for the complainants state that the respondent has unlawfully cancelled the unit allotted to the complainants despite having paid the full amount of consideration. That the respondent violated the terms of

affordable housing policy in demanding the instalment in violation of policy as well as BBA.

16. The counsel for the respondent states that the unit was cancelled on 15.06.2022 as per the BBA, the complainants failed to pay the demands amount (interest on delay payment). He further states that no third parties have been created on the unit as yet. The respondent is ready to handover the unit after revoking the cancellation to the complainants in case the complainants pay the due amount.
17. The counsel for the respondent during proceedings dated 04.10.2023 has stated that the respondent is willing to consider the handing over of possession of the unit after revoking the cancellation to the complainants in case the complainants pay the due amount. It is observed by the authority, the cancellation is made by the respondent on 15.06.2022 is not in accordance with the Affordable Housing Policy, 2013. Therefore, the cancellation of the unit is not valid as per the procedure prescribed by law. Thus, the authority is of the view that the cancellation made vide letter dated 15.06.2022 was not valid and is hereby set aside.
18. In the present complaint, the complainants intend to continue with the project and is 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."***

- 19. Due date of handing over possession:** In the present matter, promoter has proposed to hand over the possession of the apartment within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later. The authority calculated due date of possession according to clause 5.1 of the agreement dated 31.08.2018 i.e., within 4 years from the date of approval of environment clearance i.e., 09.10.2017 is being later. Therefore, the due date of possession is come out to be 09.10.2021.
- 20. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. 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.
- 21.** 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.

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., **29.11.2023** is @ 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

23. Rate of interest to be paid by the complainants-allottee on the outstanding dues: The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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 circumstances, the evidence and other record and submissions made by 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 possession by the due date as per the agreement. It is a matter of fact that buyer's agreement executed between the parties on 31.08.2018, the possession of the booked unit was to be delivered on 09.10.2021 as per the possession clause 5.1 of the BBA. Therefore, the due date of possession comes out to be 09.10.2021. Accordingly, 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 09.10.2021 till the 23.04.2022 i.e., expiry of 2 months from the date of offer of possession i.e., 23.02.2022.

26. Section 19(10) of the Act obligates the allottees 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 22.02.2022. The respondent offered the possession of the unit in question to the complainants on 23.02.2022. In the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession to take over the unit. These 2 months of reasonable time is being given to the complainants 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.

27. Accordingly, the termination letter dated 15.06.2022 is set aside in view of the aforesaid reasons and the respondent is directed to restore the allotted unit to the complainants within a period of 30 days from the date of this order and issue a fresh statement of account as per builder buyers agreement with prescribed rate of interest i.e., 10.75% p.a. on the outstanding amount towards complainants/allottee. Further, 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 complainants-allottee shall be paid, by the respondent-promoter, interest for every month of delay from due date of possession i.e., 09.10.2021 till the 23.04.2022 i.e., expiry of 2 months from the date of offer of possession i.e., (23.02.2022) 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.
28. That as per section 19(6) and 19(7) of the Act every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act. In view of the same, complainants/allottees shall make the requisite payments within a period of next 30 days of the fresh demand raised by the respondent as per the provisions of sections 19(6) and (7) of the Act.
29. Further, the respondent is directed to handover the possession of the allotted unit to the complainants complete in all aspects as per specifications of buyer's agreement on payment of outstanding dues if any, after adjustment of delay possession charges as per aforesaid directions.

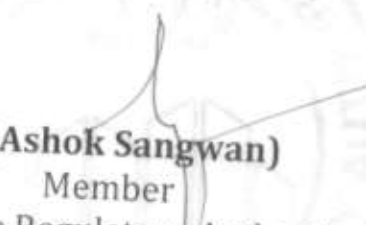
H. Directions of the authority

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30. 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):
- a. The termination letter dated 15.06.2022 is set aside in view of the aforesaid reasons and the respondent is directed to restore the allotted unit to the complainants within a period of 30 days from the date of this order and issue a fresh statement of account as per builder buyers agreement with prescribed rate of interest i.e., 10.75% p.a. on the outstanding amount towards complainants/allottee.
 - b. The complainants/allottees shall make the requisite payments within a period of next 30 days of the fresh demand raised by the respondent as per the provisions of sections 19(6) and (7) of the Act.
 - c. The respondent is directed to pay interest at the prescribed rate i.e., 10.75% p.a. for every month of delay from the due date of possession i.e., 09.10.2021 till the 23.04.2022 i.e., expiry of 2 months from the date of offer of possession i.e., (23.02.2022). The arrears of such interest accrued from 09.10.2021 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 allottee before 10th of the subsequent month as per rule 16(2) of the rules.
 - d. The rate of interest chargeable from the allottees by the promoter, in case of default in making payment 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(z a) of the Act.

- e. The respondent is not entitled to charge any amount against holding charges from the complainants/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
31. The complaint stands disposed of.
32. File be consigned to registry.


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 29.11.2023

HARERA
GURUGRAM