

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

Complaint no. : 1889 of 2023
Date of complaint : 20.04.2023
Date of decision : 24.01.2024

1. Aruna Uppal,
2. Lalit Uppal,
Both R/o: - H. No. 77, 1st Floor,
Raja Garden, New Delhi-110015.

Complainants

Versus

M/s Ramprastha Promoters and Developers Pvt. Ltd.
Regd. office at: - Plot No. 114, Sector-44,
Gurugram-122002.
Also at: - C-10, C-Block Market, Vasant Vihar,
New Delhi- 110057.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sushil Yadav (Advocate)
Gayatri Mansa and Navneet Kumar (Advocates)

**Complainants
Respondent**

ORDER

1. This has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the 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	"Ramprastha City", Sectors 37C and 37D, Gurugram, Haryana
2.	Project area	105.402 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	128 of 2012 dated 28.12.2012 valid upto 06.04.2025
5.	Name of licensee	KNS Nirman
6.	RERA Registered/ not registered	Registered vide no. 21 of 2018 dated 23.10.2018
7.	Plot no.	D-102, Primera (Page no. 53 of the complaint)
8.	Unit area admeasuring	1720 sq. ft. (Page no. 53 of the complaint)
9.	Allotment letter	07.10.2014 (Page no. 53 of the complaint)
10.	Date of execution of plot buyer's agreement	17.10.2014 (page no. 15 of complaint)
11.	Possession clause	<p>15. POSSESSION</p> <p>(a). Time of handing over the Possession</p> <p>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 the Developer, the Developer shall endeavour to complete</p>

		<p>the construction of the said Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP. The Allottee agrees and understands that the Developer 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.</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(page 29 of complaint)</p>
12.	Date of approval of building plans	25.04.2013 [As per information obtained by planning branch]
13.	Due date of possession	25.10.2017 [Note: - the due date of possession can be calculated by the 54 months from approval of building plans i.e., 25.04.2013]
14.	Grace period	Not utilized
15.	Total sale consideration	Rs.86,99,055/- [As per BBA on page 19 of complaint]
16.	Amount paid by the complainants	Rs.80,46,484/- [As per SOA on page 55 of complaint]
17.	Occupation certificate /Completion certificate	05.04.2023
18.	Offer of possession	08.04.2023 (page 26 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a unit bearing no. D-102, 1st floor admeasuring 1720 sq.ft in the project of respondent named "Primera" in Ramprastha City, Sector 37D, Gurugram vide builder

buyer's agreement dated 17.10.2014, for a total sale consideration of Rs.86,99,055/- and the complainants have paid a sum of Rs.80,46,484/- to the respondent against the same in all.

- II. That as per clause 15 of the agreement, the respondent had agreed to deliver the possession of the flat within 54 from the date of approval of building plan i.e., 25.04.2013 with an extended period of 120 days.
- III. That the complainants used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainants gave on time, but when the complainants visited to the site, they were shocked and surprised to see that construction work was not in progress.
- IV. That despite receipt of more than 90% of the payments, the respondent has failed to deliver the possession of the allotted flat to the complainants within the stipulated period.
- V. That as per clause 17(a) of the agreement, it was agreed that in case of any delay, the respondent shall pay compensation @Rs.5/- per sq.ft. per month of the total area of the flat, whereas the respondent has charged @24% per annum interest on the delayed payments.
- VI. That on the grounds of parity and equity, the respondent should also be subjected to pay the same rate of interest. Hence the respondent is liable to pay interest on the amount paid by the complainants from the promised date of possession till the flat is actually delivered to the complainants.
- VII. That the complainants have requested the respondent several times through telephonic calls as well as through personal visits to the offices of the respondent to deliver possession of the flat in question

along with prescribed interest on the amount deposited by them, but the respondent has flatly refused to do so. Thus, the present complaint.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):

i. Direct the respondent to pay delay possession charges at prescribed rate.

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 the complaint is not maintainable as the respondent has intimated for handover of physical possession of the said unit to the complainants vide email dated 08.04.2023 and it is the complainants who are not coming forward with necessary documents and balance payment to take over the possession of the unit.

ii. 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.



- iii. 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 of the respondent. Therefore, the complainants cannot be said to be genuine consumers by any standards rather they are a mere investor in the futuristic project of the respondent.
- iv. That the complainants have deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest. Further, the complainants cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. It is submitted that the respondent had to bear with the losses and extra costs owing due to delay of payment of installments on the part of the complainants for which they are solely liable.
- v. 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. Further, the complainants had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated 17.10.2014 was made by them towards a future potential project of the respondent and hence there was no question of handover of possession within any fixed time period as falsely claimed by them.
- vi. That there are various reasons which are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages, spread of covid-19 pandemic etc.



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 investor.

11. The respondent has taken a stand that the complainants are investor 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 consumer 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.80,46,484/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the 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. 000600000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investor are not entitled to protection of this Act also stands rejected.

F.II Objections regarding the circumstances being 'force majeure'.

12. The respondent contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals, passing of an HT line over the layout, road deviations and depiction of villages etc. which were beyond the control of respondent. However, no document in support of its claim has been



placed on record by the respondent. Hence, all the pleas advanced in this regard are devoid of merits. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. The respondent is also claiming benefit of lockdown imposed due to Covid-19 outbreak 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 i.e., by 23.01.2017. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay delay possession charges at prescribed rate.

13. 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)

14. As per clause 15(a) of the apartment buyer's 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 the Developer, the Developer shall endeavour to complete the construction of the said **Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP**. The Allottee agrees and understands that the Developer 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."*

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the 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. The incorporation of such clause in the buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
16. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the



apartment within a period of 54 months from the date of approval of building plans i.e., 25.04.2013 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.

17. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under.
18. 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.
19. 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., 24.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. The definition of term 'interest' as defined under section 2(z a) 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;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
22. 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 possession by the due date as per the agreement. By virtue of clause 15(a) of the apartment buyer's agreement executed between the parties on 17.10.2014, the possession of the subject apartment was to be delivered within a period of 54 months from the date of approval of building plans i.e., 25.04.2013 which comes out to be 25.10.2017. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.10.2017. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.



The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 17.10.2014 executed between the parties. Occupation certificate was granted by the concerned authority on 05.04.2023 and thereafter, the possession of the subject unit was offered to the complainants vide email dated 08.04.2023. 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 subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.10.2014 to hand over the possession within the stipulated period.

23. 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 05.04.2023. The respondent offered the possession of the unit in question to the complainants only on 08.04.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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 till the expiry of 2 months from the date of offer of possession (08.04.2023) which comes out to be 08.06.2023.

24. 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 @10.85% p.a. w.e.f. 25.10.2017 till the expiry of 2 months from the date of offer of possession (08.04.2023) which comes out to be 08.06.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

H. Directions of the authority

25. 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/promoter is directed to hand over possession of the subject unit and pay interest to the complainants against the paid-up amount of Rs.80,46,484/- at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 25.10.2017 till expiry of 2 months from the date of offer of possession (08.04.2023) i.e., upto 08.06.2023 only as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
 - ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



- iii. The respondent-promoter shall not charge anything from the complainants which is not the part of the apartment buyer's agreement.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.
26. Complaint stands disposed of.
27. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2024