

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

Complaint no.	:	2086 of 2022
First date of hearing:		19.08.2022
Date of decision	:	05.01.2024

Lt. Col. Radha Rana Address: - H.no. 08, Street no. 1, South Ganesh Nagar, Patparganj Road, Delhi-110092	<b>Complainant</b>
Versus	
1. M/s Ramprastha Estates Pvt. Ltd. 2. M/s Ramprashtha Promoters and Developers Private Limited 3. M/s Ramprastha Developers Pvt. Ltd. Regd. Office at: - Plot No. 114, Sector-44, Gurugram- 122003	<b>Respondents</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

<b>APPEARANCE:</b>	
Sh. Ravi	Advocate for the complainant
Sh. Divyanshu	Advocate for the respondents

**ORDER**

1. The present complaint dated 26.05.2022 has been filed by the complainant/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 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. Unit and project related details**

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

S.No.	Heads	Information
1.	Project name and location	"Ramprastha City" Sector-92, 93 and 95, Gurugram.
2.	Project area	128.594 acres
3.	Nature of the project	Residential colony
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010 valid till 08.06.2016
5.	Name of licensee	Ramprastha Estates Private Limited and 25 others
6.	RERA registered/not registered	Registered vide no. 13 of 2020 dated 05.06.2020
7.	Plot no.	F-146 [Page 58 of complaint]
8.	Unit measuring	250 sq. yds. [Page 58 of complaint]
9.	Date of welcome Letter	21.12.2013 [Page 46 of complaint]
10.	Date of allotment letter	21.12.2013 [Page 47 of complaint]
11.	Date of execution of plot buyer agreement	24.12.2013 [Page 55 of complaint]
12.	Total consideration	Rs.30,75,000/- [as per payment plan Page no. 70 of complaint]



13.	Total amount paid by the complainant	Rs.25,90,000/- [as per averment of complainant at page no. 22 of the complaint and the same was admitted by the respondents on page 3 of reply]
14.	Due date of delivery of possession as per clause 11(a) of the plot buyer agreement: 30 months from the date of execution of agreement [Page no. 61 of complaint]	24.06.2016
15.	Occupation certificate	Not obtained
16.	Offer of Possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
4. That the complainant booked a plot bearing no F-146 admeasuring 250 sq. yds. by paying Rs. 12,50,000/- as initial booking amount for the said plot.
5. That, on 26.04.2011 the respondents issued a letter of preliminary allotment stating that a plot had been allotted to complainant and that the specific plot number shall be allotted to it after approval of zoning plans which it expected to be accorded shortly.
6. That, on 21.12.2013 the complainant, in compliance to demand of respondents made the payment of required demand through cheque and was formally allotted residential plot no F-146 in the said project. The formal receipt of payment was issued on 20.01.2014.
7. That, on 24.12.2013 formal plot buyer's agreement was entered between the complainant and respondent with respect to the said plot. As per



clause 11(a) of the plot buyer agreement, the respondents was required to offer the possession of the plot within 30 months of signing of the said agreement or by 24.06.2016

8. That the respondents did not offer possession of the plot on 24.06.2016 despite expiry of 30 months since the signing of the plot buyer agreement.
9. That since the complainant had actually booked the plot by making initial payment way back in 15.07.2006 itself, all throughout, the complainant has been following up with the respondents about the status of the project but all in vein.
10. That total selling price of the plot as per plot buyer's agreement is Rs. 30,75,000/- out of which complainant has already paid ₹ 25,90,000/- and as per construction linked payment plan opted by complainant, now, ₹4,85,000/- only remains to be paid, which also has not yet fallen due as the same is payable at time of 'Intimation of Possession' which has not been issued as yet.
11. That, the respondents were required to offer possession of plot to the complainant by 24.06.2016 as per the terms of the plot buyer's agreement but, has failed to do so till date.
12. That, there has been failure to deliver possession of the plot by respondents in time as per the agreement and inordinate delay by respondents despite the complainant having paid ₹ 25,90,00/- or nearly 85% of consideration that too by 21.12.2013. The complainant has no alternative and wants to get the possession of the plot at the earliest along with interests due toward it, because of delay at hands of respondents and thus is filing this complaint.

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

13. The complainant has sought following relief(s)

- I. Direct the respondents to pay the interest at the rate of 18% p.a. on the amount paid for the said residential plot on account of delay in offering possession from the date of payment till delivery of physical and vacant possession of said residential plot.
- II. To directing the respondents to handover the possession of residential plot.

14. On the date of hearing, the authority explained to the respondents /promoter on the contravention 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 respondents**

15. In the present complaint the complainant has made three respondents. The authority is of the view all the 3 respondent companies are same and they have contested the said complaint together on the following grounds. The submission made therein, in brief is as under: -
16. That the present complaint is not maintainable in its present form and the complaint is strictly liable to be dismissed on the grounds presented hereunder by the respondents. That the Haryana Real Estate Regulatory Authority (hereinafter referred to as "Ld. Regulatory Authority") has no jurisdiction to entertain the present complaint. It is submitted therefore that this reply is without prejudice to the rights and contentions of the respondents contained in the said application.
17. That the complainant has approached the respondents in the year 2006 to invest in undeveloped agricultural land in one of the futuristic projects of the respondents located in Sectors 92, 93 and 95, Gurugram. The



complainant fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere futuristic project have decided to make an investment in the said project for speculative gains. Thereafter, on 03.07.2006, the complainant has paid a booking amount of Rs.12,50,000/- towards booking of the said project pursuant.

18. That the complainant have paid an amount of Rs. 25,90,000/- which is part of total consideration of the plot. That the said payments were not full and final payments and further payments inter alia towards government dues on account of EDC/IDC charges are payable at the time of allotment of plot and execution of plot buyer agreement.
19. That further no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the authority which is within the knowledge of the complainant herein. It is submitted that as per averments made by complainant, the petitioners have claimed interest from the June, 2016 which also shows that the amount claimed by the complainant have hopelessly barred by limitation.
20. The claims for possession are superfluous and non-est in view of the fact that the complainant are actually not even entitled to claim possession of the plot as on date. It is submitted that it is only on default in offer/handover of possession that the petitioners right to claim possession/refund crystalizes.
21. That no documents have been submitted by the complainant in support of the time for possession and as per the complainant' own averments the plot was required to handover in three years period i.e., in June, 2016. Hence, it is submitted, without admitting to such date of handover of



- possession cited by the complainant herein, even if the date of possession was to be construed in June, 2016, the period of limitation has come to an end in the year June, 2019.
22. There is no obligation on the part of the respondents to allot or handover any plot to the complainant since the complainant has failed to provide any evidence of execution of plot buyer's agreement in favour of the complainant.
23. The complainant have attempted to create a right in their favour by resorting to terminate transactions which have become hopelessly barred by time and after the period of limitation has lapsed it cannot be revived.
24. That further that the complainant were never interested in fulfilling the necessary formalities towards booking of the said plots. Neither the complainant have made any further payment for plot as such in Ramprastha City nor did they submit any application for the same. It is apparent that the complainant never turned up for the completion of the formalities.
25. The booking did not fructify and proceed to the stage of execution of plot buyer's agreement due to the complainant own failure to pay the full consideration towards purchase price of the said plot and complete the formalities.
26. That no date of possession was ever committed by the respondents since the project was a futuristic project and the petitioners have knowingly made speculative investments in the said project.
27. That it is evident that the complainant has approached the Hon'ble Authority by suppressing crucial facts with unclean hands which is



evident from its own complaint. Therefore, the present complaint is liable to be rejected in limine based on this ground alone.

28. That the complainant are not "Consumer" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainant were to make investment in a futuristic project of the respondents only to reap profits at a later stage when there is increase in the value of land at a future date which was not certain and fixed and 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.
29. The complainant 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 respondents and the complainant has no intention of using the said plot for their personal residence or the residence of any of their family members and if the complainant has such intentions, they would not have invested in a project in which there was no certainty of the date of possession. The sole purpose of the complainant were to make profit from sale of the plot at a future date and now since the real estate market is in a desperate and non-speculative condition, the complainant has cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondents. That the complainant have purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said futuristic undecided plot and therefore, the present complaint being not maintainable and must be dismissed in limine.





30. That complainant has approached the respondent's office in June/ July 2006 and have communicated that the complainant are interested in a project which is "not ready to move" and expressed their interest in a *futuristic project*. That the complainant were not interested in any of the ready to move in/near completion projects of the respondents. It is submitted that a futuristic project is one for which the only value that can be determined is that of the underlying land as further amounts such as EDC/IDC charges are unknown and depends upon the demand raised by the statutory authorities. That on the specific request of the complainant, the investment was accepted towards a futuristic project and no commitment was made towards any date of handover or possession since such date was not foreseeable or known even to the respondents. The respondents had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainant towards development charges, but the complainant were duly informed that such charges shall be payable as and when demands will be made by the Government. The complainant are elite and educated individuals who have knowingly taken the commercial risk of investing a project the delivery as well as final price were dependent upon future developments not foreseeable at the time of booking transaction. Now the complainant are trying to shift the burden on the respondents as the real estate market is facing rough weather.
31. That on the date of provisional allotment of the plot even the sectoral location of the plot was not allocated by the respondents. The plot at the date of booking/provisional allotment was nothing more than a futuristic project undertaken to be developed by them after the approval of zoning



plans and completion of certain other formalities. A plot in a futuristic project with an undetermined location and delivery date cannot be said to be a plot purchased for residential use by any standards. Therefore, the payment made by the complainant towards the said plot cannot be said to be made towards the plot purchased for residential use instead it was a mere investment in the futuristic project of the respondents. The complainant therefore only invested in the said plot so that the same can be used to derive commercial benefits/gains.

32. That the complainant cannot be said to be genuine consumers by any standards; rather the complainant are mere investor in the futuristic project of the respondents. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.
33. That complainant has knocked at the doors of this authority for recovery of their investments under the disguise of a "genuine Consumer". That complaint makes it apparent that the complainant are not consumers within the lines of the Consumer Protection Act but mere investors who intends to recover the amounts paid by them along with extracting huge amounts of interest from the respondents. The complaint is a malafide attempt by the complainant to abuse the forum of this authority for recovery of their investments.
34. The complainant has knowingly invested in an undeveloped land in a futuristic area where on the date of investment by the complainant, even the zoning plans were not sanctioned by the Government. It is understood that he has educated and elite individuals and had complete understanding of the fact that unless zoning plans have been approved



their investment is in the shape of an undeveloped agricultural land; however as and when zoning plans have been approved, it will be possible to implement the development of a residential plotted colony in the area and the investment of the complainant will appreciate substantially. This clearly shows that the complainant have sheer commercial motives. That an investor in a futuristic undeveloped plot cannot be said to be a genuine buyer by any standards.

35. That complainant have booked a plot admeasuring 250 sq. yards in the future potential project in "Ramprastha City" of the respondents in the year 2006 against which a tentative registration was issued after a payment of Rs. 12,50,000/- and it was mentioned that a specific plot number shall be earmarked once the zoning plans have been approved by the concerned authorities. The complainant has been made clear about the terms and conditions at the time of booking of the plot themself.
36. That the statement of objects and reasons as well as the preamble of the said Act categorically specify the objective behind enacting the said Act to be for the purpose of protecting the interests of consumers in the real estate sector. However, the complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the Haryana Real Estate Regulation and Development Act, 2016. The complainant are only an investors in the present project who has purchased the present property for the purposes of investment /commercial gain. The present complaint is a desperate attempt of the complainant to harass the respondents and to harm the reputation of the respondents.

37. That since the Act does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 1986 (hereinafter referred to as the CPA). That the plain reading of the definition of the term "Consumer" envisaged under the CPA makes it clear that complainant does not fall within the walls of the term "Consumer". That further the complainant are mere investor who has invested in the project for commercial purposes.
38. That complainant has nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". Therefore, the complainant cannot be said to be consumers of respondents within the caricature of consumer within the Consumer Protection Act, 1986. The complainant has deliberately concealed the motive and intent behind purchasing of the unit. In this behalf, the authority may strictly direct the complainant to adduce any documentary evidence in support of their averments.
39. That the entire transaction of the complainant with the respondents of purchasing a unit in the project was for a "commercial purpose" and hence, in view of catena of judgments of the Hon'ble National Consumer Disputes Redressal Commission, the complaint before the authority is not maintainable in its present form and hence is liable to be dismissed at its very beginning.
40. That the complainant is not entitled to claim possession as claimed by the complainant in the complaint is clearly time barred. The complainant has itself not come forward to execute the buyer's agreement and hence cannot now push the entire blame into the respondents. That it is due to lackadaisical attitude of the complainant along with several other



reasons beyond the control of the respondents as cited by them which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainant cannot now suddenly show up and thoughtlessly file a complaint against the respondents on its own whims and fancies by putting the interest of the builder and the several other genuine allottee at stake. If at all, the complainant has any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondents. The entire intention of the complainant are made crystal clear with the present complaint and concretes the status of the complainant as an investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

41. That the complainant was waiting for the passage of several years to pounce upon the respondents and drag the respondents is unnecessary legal proceeding. It is submitted that huge costs must be levied on the complainant for this misadventure and abuse of the process of court for arm twisting and extracting money from respondents.
42. That the complainant has concealed its own inactions and defaults since the very beginning. The complainant has deliberately concealed the material fact that the complainant is at default due to non-payment of developmental charges, govt charges (EDC & IDC), PLC and interest free maintenance security (IFMS), which has also resulted into delay payment charges/ interests.

43. That the respondents had to bear with the losses and extra costs owing due delay of payment of developmental charges, Govt charges (EDC & IDC), PLC and interest free maintenance security (IFMS) on the part of the complainant for which they are solely liable. However, the respondents owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondents constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainant.
44. That the complainant has been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondents into agreeing with the unreasonable demands of the complainant. The reality behind filing such complaint is that the complainant have resorted to such coercive measures due to the downtrend of the real estate market and by way of the present complaint, is only intending to extract the huge amounts in the form of exaggerated interest.
45. That this conduct of the complainant itself claims that the complainant are mere speculative investor who has invested in the property to earn quick profits and due to the falling & harsh real estate market conditions, the complainant are making a desperate attempt to quickly grab the possession along with high interests on the basis of concocted facts.
46. That the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected



on the ground that the complainant has indirectly raised the question of approval of zoning plans which is beyond the control of the respondents and outside the purview of the authority and in further view of the fact the complainant has knowingly made an investment in a future potential project of the respondents. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.

47. That the complainant primary prayer for handing over the possession of the said plot is entirely based on imaginary and concocted facts by the complainant and the contention that the respondents was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated April 2007 was made by the complainant towards a *future potential project* of them and there was no question of handover of possession within any fixed time period as falsely claimed by the complainant; the complaint does not hold any ground on merits as well.
48. That the respondents has applied for the mandatory registration of the project with the authority but the same is still pending for approval on the part of the authority. However, in this background that by any bound of imagination the respondents cannot be made liable for the delay which has occurred due to delay in registration of the project under the authority. It is submitted that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and



obstructing the registration of the project under the authority for which the respondents is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of them. This by any matter of fact be counted as a default on the part of the respondents.

49. There is no averment in the complaint which can establish that any so called delay in possession could be attributable to the respondents as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondents including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainant while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondents had acted in a manner which led to any so called delay in handing over possession of the said plot.
50. It is submitted that when the complainant has approached the respondents, it was made unequivocally clear to the complainant that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land; and ii) specific plot with preferred location can be demarcated only when the government releases the zoning plans applicable to the area Village Basai, Gadauli Kalan, Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainant. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural plot of the respondents.





51. That even in the adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondents has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyer/allottee. That even in such harsh market conditions, the respondents have been continuing with the construction of the project and sooner will be able to complete the development of the project.
52. The complainant are short-term speculative investor, their only intention was to make a quick profit from the resale of the land and having failed to resell the plot due to recession and setbacks in the real estate world, have resorted to this litigation to grab profits in the form of interests. It is most strongly submitted that the complainant were never interested in the possession of the property for personal use but only had an intent to resell the property and by this, they clearly fall within the meaning of speculative investor.
53. That the delay has occurred only due to unforeseen and unpredictable circumstances which despite of best efforts of the respondents hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the plot for which respondents cannot be held accountable. However, the complainant despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondents with a wrongful intention to extract monies.



54. The projects in respect of which the respondents have obtained the occupation certificate are described as hereunder: -

S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received
3.	Edge Tower I, J, K, L, M Tower H, N Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G)	400 160 80 640	OC received OC received OC received OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

55. 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 submissions made by the parties.

**E. Jurisdiction of the authority**

56. The respondents have raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondents 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**

57. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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**

58. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.I Objection regarding entitlement of DPC on ground of complainant being investors**

59. The respondents have taken a stand that the complainant is the investor and not consumer, therefore he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents 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 observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that



any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the plot buyer's agreement, it is revealed that the complainant is buyer and he has paid an amount of Rs.25,90,000/- 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;"*

60. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the plot buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to him 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 investors are not entitled to protection of this Act also stands rejected.



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

**G.I Delayed possession charges.**

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

***"Section 18: - Return of amount and compensation***

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

.....

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

62. Clause 11 of the plot buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"11. Schedule for possession**

- (a) *"The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan.*
- (b) .....
- (c) .....
- (d) ***Failure of Company to offer possession and payment of compensation.***

*In the event the Company fails to offer of possession of the said plot, within thirty (30) months from the date of execution of this Agreement then after the expiry of grace period of 6 months from the said 30(thirty) months subject to the intending Allottee(s) having made all payments as per the payment plan and subject to the terms, conditions of this Agreement and bring force majeure circumstances, the company shall pay compensation to the intending Allottee(s) calculated at the rate of Rs.90/- per sq. yard. Per month on the full area of the Said Plot which both parties have agreed is just and equitable estimate of the damages that the intending Allottee(s) may suffer and the intending Allottee(s) agrees that he/they shall not*



*have any other claims/rights whatsoever. The adjustment of compensation shall be done at the time of execution of the conveyance deed."*

63. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment by the intending complainant of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan. 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 allottees that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the plot buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees 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 allottees are left with no option but to sign on the dotted lines.
64. **Admissibility of grace period:** The respondents have submitted that the proposed estimated time of handing over the possession of the said plot was 30+6 months i.e. 36 months from the date of execution of plot buyer agreement dated 24.12.2013 which comes out to be 24.12.2016 and not 30 months from the date of the agreement. As per clause 11 of the plot buyer's agreement, the promoter has proposed to hand over the possession of the plot within 30 months from the date of execution of this agreement subject to timely payment by the intending allottee(s) of total price, stamp duty, registration charges, and any other charges due and



payable according to the payment plan. The authority observed that in the said clause, the respondents have failed to mention any expression w.r.t entitlement of grace period for calculating due date of possession, therefore, the promoter/respondents are not entitled to any grace period.

**65. Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides that where an allottees 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.

66. 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.

67. 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., 05.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

68. 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;"*

69. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

70. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are 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 11 of the agreement executed between the parties on 24.12.2013, the possession of the subject plot was to be delivered within a period of 30 months from the date of execution of this agreement which comes out to be 24.06.2016. 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 24.06.2016. The respondents have failed to handover possession of the subject plot till date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 24.06.2016 till the date of offer of possession plus two months or handing over of possession after obtaining the receipt of completion certificate/part completion certificate from the competent authority whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**H. Directions of the authority**

71. 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 respondents are directed to handover physical possession of the subject <sup>plot</sup> ~~unit~~ within 2 months after obtaining valid completion certificate from the competent authority.
- ii. The respondents are directed to pay interest at the prescribed rate i.e. 10.85% p.a. for every month of delay from the due date of possession i.e., 24.06.2016 till the date of offer of possession plus two months or handing over of possession after obtaining the



- receipt of completion certificate/part completion certificate from the competent authority whichever is earlier.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The arrears of such interest accrued from 24.06.2016 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoter which are 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.
- vi. The respondents shall not charge anything from the complainant which is not the part of the agreement.
72. Complaint stands disposed of.
73. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 05.01.2024