

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

Complaint no.: 1093 of 2022
First Date of Hearing: 28.04.2022
Date of Decision: 16.11.2023

Sh. Rajesh Kumar Yadav
R/o: - House No. 51, Backside of Geeta Bhawan,
Jyoti Park, Gurugram- 122001

Complainant

Versus

1. M/s Ramprastha Estates Private Limited.
2. M/s Ramprastha Promoters and
Developers Private Limited

Respondents

Regd. Office at: C-10, C Block, Market, Vasant
Vihar, New Delhi- 110057
Corporate Office at: - Plot No. 114, Sector-44,
Gurugram-122002

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Aditi Gandhi (Advocate)
Ms. R Gayathri Manasa (Advocate)

Complainant
Respondents

ORDER

1. The present complaint dated 16.03.2022 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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.	Unit no.	Plot no. -11, Block- D (As per page no. 32 of complaint)
8.	Unit measuring	250 sq. yds. (As per page no. 32 of complaint)
9.	Date of execution of plot buyer agreement	28.02.2014 (As per page no. 27 of complaint)
10.	Payment plan	Possession linked payment plan. (As per page no. 44 of complaint)
11.	Total consideration	Rs.34,50,000/- (As per payment plan Page no. 38 of complaint)
12.	Total amount paid by the complainant	Rs.29,65,000/- (As per page no. 3 of the reply and confirmed by both the parties during proceedings)
13.	Due date of delivery of	28.08.2016

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	possession as per clause 11(a) of the plot buyer agreement: 30 months from the date of execution of agreement	(As per page no. 34 of complaint)
14.	Delay in handing over possession till date of filing of complaint i.e., 16.03.2022	5 years 6 months and 16 days
15.	Completion Certificate	Not Obtained
16.	Offer of Possession	Not Offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -
- I. That the complainant is a senior citizen and a law-abiding person of India living at the above-mentioned address.
 - II. That the complainant was in dire need of a residential accommodation at Gurugram having good infrastructure and all basic facilities/amenities for residing therein with his family members.
 - III. That the respondents had advertised about their project under name and style "RAMPRASTHA ESTATES PVT. LTD." situated at 114, Sector - 44, Gurugram, Haryana-122002, having the registered office at C-10, C-Block Market, Vasant Vihar, New Delhi-110057.
 - IV. That the complainant made the payment against the purchase of residential unit as and when demanded by the respondents according to the "Payment Plan" mentioned in the buyer's agreement.
 - V. That the complainant paid an amount of Rs.1,00,000/- vide cheque bearing no.269242 dated 15.05.2006, an amount of Rs.1,50,000/- vide cheque bearing no.269243 dated 17.05.2006 and an amount of

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- Rs.2,00,000/- vide cheque bearing no.022249 dated 16.6.2006 to respondent no.1 for booking of residential unit in the project.
- VI. That the complainant further paid an amount of Rs.50,000/- vide cheque bearing no.022248 dated 01.07.2006, an amount of Rs.1,00,000/- vide cheque bearing no.002911 dated 25.09.2006 and an amount of Rs.2,00,000/- vide cheque bearing no.002912 dated 25.09.2006 to respondent no.1.
- VII. That on 09.01.2010, a confirmation letter was received from the respondent no.1 confirming the allotment of Memo No.LC-2098-JD (BS)/2009/1989, the letter of intent (LOI) for the development of a residential township in Sector-92, 93 and 95.
- VIII. That a letter dated 26.09.2012 was received from the respondent no.2 informing the complainant regarding the tentative booking for residential unit.
- IX. That on 28.02.2014, a plot buyer's agreement was executed between the complainant and the respondent no.2 and the complainant opted for construction-linked plan. The total sale consideration is Rs.34,50,000/- for the unit.
- X. That according to the 'Payment Link Plan', the complainant paid a total amount of Rs.24,62,500/- which was booking-linked and further paid Rs.5,02,500/- at the time of agreement. Hence out of the total sale consideration of Rs.34,50,000/- the complainant has in total paid an amount of Rs.29,65,000/- till date.
- XI. That the possession of the unit was scheduled to be offered within 30 months from the signing of the buyer's agreement i.e., 28.08 2016 but till date, no possession has been handed over to the complainant and

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whenever the complainant tried to contact the respondents, the respondents used to give false assurances to the complainant about the completion of the project and revised date of possession.

- XII. That the complainant regularly contacted the respondent to get the final date of possession but the respondents with malafide intention was not giving the positive answer to his requests.
- XIII. That the complainant after exhausting all his patience had lastly contacted the representatives of the respondent for providing the final revised date of possession of the said unit but no fruitful answer has been given by the respondents and their officials. Hence, the cause of action arose for the first time in the month of August, 2016 when the possession was scheduled to be offered by the respondents but they failed to deliver the physical possession of the said unit. The cause of action is recurring till date as the physical possession has not been handed over to the complainant till now. Thus, the complainant has every right to file the present complaint before the Hon'ble Authority.
- XIV. That the respondents have played fraud upon the complainant and robbed him of all his savings that were majorly invested with the respondent company for the purpose of purchasing the said unit.
- XV. That the complainant wanted to own a residential space at a good location for himself and his family members but this dream of the complainant has been shattered by the respondent company under the given circumstances. The respondent has voluntarily committed cheating, fraud and criminal breach of trust with the complainant.
- XVI. That the respondents have also been causing delay in completing the construction/development work of the said project thereby causing

agony, financial loss and harassment to the complainant. The complainant is being exploited through misrepresentation and concealment of facts by the respondent who is also having illegal possession of the hard-earned money of the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondent to handover the possession of the residential unit.
 - II. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
 - III. Direct the respondent to execute the registered sale deed of the residential unit.
 - IV. Direct the respondent to pay legal expenses of Rs.1,50,000/-.
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 no.2:

6. The respondent has contested the complaint on the following grounds:
 - i. That at the very outset, it is most respectfully submitted that the complaint filed by the complainant is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.
 - ii. **That the date of handover of possession has never arrived**
 - a. That at the outset it is submitted that there is no agreement whether express or implied, oral or written, between the complainant and the respondent herein to provide any goods or services and the complainant had admittedly nowhere claimed to have purchased

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any goods or availed any services from the respondent. It is submitted that the complainant had requested the respondent seeking investment in undeveloped agricultural land in the year 2006 in the hope of making speculative gains on the approval of the zoning plans. But since the zoning plans were not approved by the government, the complainant has sought to file this vexatious complaint. That the respondent has not agreed to provide service of any kind to the complainant unless the plans were approved as it was merely a transaction for sale of plot. The complainant has filed the present complaint with malafide intention of abusing the process of the Hon'ble Authority for wrongful gains in the form of interest at the cost of the respondent when in reality his speculative investments have failed to give any return in present harsh real estate market conditions.

- b. That the complainant has approached the respondent in the year 2006 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sector 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 of the respondent for speculative gains. That thereafter, on 15.05.2006, the complainant has paid a booking amount of Rs. 1,00,000/- towards booking of the said project.
- c. That further the complainant herein has resorted to file a complaint solely on the basis of false claims and baseless accusations against the respondent while concealing its own defaults and laches for which the complainant is solely liable.

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- d. That further the complainant has maliciously alleged that he has paid full consideration towards the booking of the plot in the futuristic project of the respondent, while in reality he has only paid an amount of Rs.29,65,000/-. It is submitted that the said payments were not full and final payments.
- e. That the definitive plot buyer's agreement contain the details of the plots, date of possession and the rights and obligations of the buyers and the developers provided the zonings plans have been approved and in the absence of a plot buyer's agreement no rights are vested in favour of the complainant to claim handover and possession of any plot whatsoever.
- f. That further no date of possession has ever been mutually agreed between the parties. That even in the provisional allotment letter, 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.
- g. The claims for possession are superfluous and non-est in view of the fact that the complainant is 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 petitioner's right to claim possession/refund crystalizes.
- h. That further it is submitted that no documents has been submitted by the complainant in support of the time for possession and as per the complainant's own averments the plot was required to handover in three years period i.e., in August 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

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to be construed in August 2016, the period of limitation has come to an end in the year August, 2019.

- i. There is no obligation on the part of the respondent 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.
- j. The complainant has attempted to create a right in his 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.
- k. That further that the complainant was never interested in fulfilling the necessary formalities towards booking of the said plot. Neither the complainant has made any further payment for plot as such in Ramprastha City nor did he submit any application for the same. It is apparent that the complainant never turned up for the completion of the formalities.
- l. That the booking did not fructify and proceed to the stage of execution of plot buyer's agreement due to the complainant's own failure to pay the full consideration towards purchase price of the said plot and complete the formalities.
- m. Further it is pertinent to mention herein that no date of possession was ever committed by the respondent since the project was a futuristic project and the complainant has knowingly made speculative investments in the said project.

iii. **Complainant is not genuine buyer:**

- (i) 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 the applicant is educated and elite individual and had complete understanding of the fact that unless zoning plans have been approved his 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 had sheer commercial motives. It is submitted that an investor in a futuristic undeveloped plot cannot be said to be a genuine buyer by any standards.

- (ii) That this is a case where the complainant has booked a plot admeasuring 250 sq. yds. in the future potential project in "Ramprastha City" of the respondent in the year 2006 against which a tentative registration was issued after a payment of Rs.1,00,000/- and accordingly an allotment letter was issued by the respondent also mentioning the fact 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 itself.
- (iii) That it is submitted 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 present complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act. The present complainant is only an

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investor in the present project who has purchased the present property for the purposes of investments/commercial gain. The present complaint is a desperate attempt of the complainant to harass the respondent and to harm the reputation of the respondent.

- (iv) That since the RERA 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 the present complainant does not fall within the walls of the term "Consumer". That further the complainant is a mere investor who has invested in the project for commercial purposes.
- (v) That further 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 consumer of respondent within the caricature of consumer within the Consumer Protection Act, 1986. The complainant has deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf, the Hon'ble Authority may strictly direct the complainant to adduce any documentary evidence in support of his averments.
- (vi) That further the complainant is already in ownership of one property which the complainant has materially concealed herein. Hence, by any standard of imagination, the present complainant cannot to be said to have purchased the present property for personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or

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gain, hence, the complainant is plainly investor who has filed the present complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments.

iv. The complaint defies the stipulated period of limitation

- i. That the complainant herein is not entitled to claim delayed possession charges as claimed by the complainant in the complaint is clearly time barred. The complainant has himself not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainant along with several other reasons beyond the control of the respondent as cited by the respondent 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 herein 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. If at all, the complainant had 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 respondent.

v. No default has occurred on the part of the respondent

- i. That further the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the department of Town and Country Planning. The complaint is

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

ii. That further the respondent has applied for the mandatory registration of the project with the authority but however the same is still pending approval on the part of the authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act of 2016. 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 Act of 2016 for which the respondent 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 the respondent.

iii. There is no averment in the complaint which can establish that any so called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The 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 his own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so called delay in handing over possession of the said plot.

- iv. The respondent is owner of vast tracts of undeveloped land in the revenue estate of Village Basai, Gadauli Kalan and falling within the boundaries of Sector 37C and 37D Gurugram also known as Ramprastha City, Gurugram.
- v. That when the complainant had approached the respondent, 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 a 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 respondent.
- vi. That the delay has occurred only due to unforeseen and untraceable circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the plot for which respondent 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 respondent with a wrongful intention to extract monies.

7. The present complaint has been filed by the complainant against M/s Ramprastha Estates Pvt. Ltd. as R1 and M/s Ramprastha Promoters and Developers Pvt. Ltd. has been mentioned in memo of parties as R2. The reply has been filed by the R2 while the receipt of payment has been issued by R1 only. The registered office address of both the respondents as mentioned in complaint is same. Further, the address mentioned by Sh. Tarun Arora, Authorized Representative of the R2 as mentioned in the affidavit dated 23.04.2022 is also same as mentioned in the complaint but he has not distinguished the role and responsibilities between R1 and R2 and both respondents are associated company having same address and hence both are jointly and severally responsible to the complainant-allottee.
8. 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:

9. 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

10. 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

11. 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.

12. 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 complainant at a later stage.

F. Findings on objections raised by the respondent no.2:

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

13. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the plot buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said

rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

14. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession

charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding complainant being investor:

16. The respondent has taken a stand that the complainant is the investor and not consumer. Therefore, he is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the plot buyer's agreement, it is revealed that the complainant is buyer and paid total price of Rs.29,65,000/- to the promoter

towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference.

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

17. 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 complainant is allottee 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 concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.III Objection regarding complaint barred by Limitation Act, 1963

18. Another contention of the respondent is that if the date of possession was to be construed in August 2016, the period of limitation has come to an end in the year August 2019. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as **M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others** which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue

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of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

19. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Findings on the relief sought by the complainant:

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

20. The above-mentioned reliefs sought by the complainant are taken together being interconnected.
21. The due date of possession of the unit as per clause 11(a) of the plot buyer's agreement, is to be calculated as 30 months from the execution of plot buyer's agreement. Therefore, the due date is calculated 30 months from the execution of plot buyer's agreement i.e., 28.02.2014 which comes out to be 28.08.2016.

22. Admissibility of delay possession charges at prescribed rate of interest:

In the present complaint, the complainant 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."

(Emphasis supplied)

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23. The complainant is seeking delay possession charges at the prescribed rate as per the Act of 2016. 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.

24. 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.
25. 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., 16.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
26. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondents /promoter which is the same as is being granted to the complainant in case of delayed possession charges.

28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over possession is 28.08.2016. No document is placed on record to show that after completing the unit, completion certificate has been obtained or even applied to the competent Authority. Therefore, 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. 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 respondent 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., 28.08.2016 till offer of possession of the said unit after obtaining the completion certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, 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.

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29. The counsel for the respondents has brought to the notice of the Authority vide proceedings of the day dated 16.11.2023 that there have been several changes in the layout plan and zoning plan has been finally approved by the DTCP and now the approval of service plan is pending and the delay in possession has occurred due to inordinate delay by the authorities for grant of sanctions and the possession will be offered after completing the development works as per revised service estimates to be sanctioned by the competent authority.

G.II Direct the respondent to execute registered sale deed of the unit

30. The complainant is seeking directions for the execution of conveyance deed.
31. Section 17 (1) and proviso of the Act of 2016 provides as under:

"Section 17: - Transfer of Title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

32. The authority is of view that promoter is under an obligation to get conveyance deed executed in favour of the complainant as per the section 17(1) of the Act, 2016. Since the completion certificate of the unit is not yet obtained the respondents/promoter is directed to obtain the completion certificate and get the conveyance deed of the allotted unit executed as per section 17(1) of the Act of 2016 on payment of requisite stamp duty and registration charges by the complainant/allottee..

G.III Direct the respondent to pay legal expenses of Rs.1,50,000/-

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33. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

H. Directions of the Authority:

34. 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/promoter are directed to pay interest on the paid-up amount by the complainant at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 28.08.2016 till offer of possession of the said unit after obtaining the completion certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
- ii. The complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondents shall handover the possession of the allotted unit on obtaining of completion certificate and shall execute the conveyance deed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges.
- iii. The arrears of such interest accrued from 28.08.2016 till the date of this order by the authority shall be paid by the promoter to the

allottee(s) 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(s) before 10th of the subsequent month as per rule 16(2) of the rules.

- iv. The respondents shall not charge anything from the complainant which is not the part of the plot buyer's agreement.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

35. Complaint stands disposed of.

36. File be consigned to registry.

V. 1 - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.11.2023

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GURUGRAM