BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**5514 of 2022**
Date of complaint	:	**10.08.2022**
Date of order	:	**21.02.2024**

Satinder Chatha,
R/o: - 6, 1002, The Legends,
Sector-57, Gurgaon, Haryana. **Complainant**

Versus

Ramprashtha Promoters and Developers Pvt. Ltd.
Regd. Office at: - Plot no. 114, Sector-44,
Gurugram, Haryana-122002. **Respondent**

CORAM:
Vijay Kumar Goyal — Member
Ashok Sangwan — Member

APPEARANCE:
Harshit Batra (Advocate) — Complainant
R. Gayatri Mansa and Navneet Kumar (Advocates) — Respondent

ORDER

1. This complaint 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 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. N.	Particulars	Details	
1.	Name of the project	"Skyz", Sector 37C, Village Gadauli Kalan, Gurugram	
2.	Project area	60.5112 acres	
3.	Registered area	102000 sq. mt.	
4.	Nature of the project	Group housing complex	
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025	
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others	
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]	
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]	
9.	RERA Registered/ not registered	**Registered vide no. 320 of 2017 dated 17.10.2017**	
10.	RERA registration valid up to	31.03.2019	
11.	Extension applied on	26.03.2019	
12.	Extension certificate no.	**Date**	**Validity**
		HARERA/GGM/REP/RC/320/2017/EXT/122/2019 In principal approval on 12.06.2019	30.03.2020
13.	Unit no.	I-1703, 17th floor, tower/block- I (Page no. 30 of the complaint)	
14.	Unit area admeasuring	2050 sq. ft. (Page no. 30 of the complaint)	
15.	Date of apartment buyer agreement	04.04.2017 (Not Executed)	

16.	Date of booking	04.09.2011 (as per annexure C-1 on page 20 of complaint) (as admitted by the respondent on page 11 of reply)
17.	Possession clause	**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 DEVELOPERS, the DEVELOPERS propose to hand over ***the possession of the Apartment by (_____). The Allottee agrees and understands that the DEVELOPERS 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.*** **(Emphasis supplied)** (Page no. 40 of the complaint)
18.	Due date of possession	04.09.2014 (calculated from the date of booking) [Calculated as per ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]***
19.	Total sale consideration	Rs.84,38,475/- (as per payment plan on page 55 of complaint)

20.	Amount paid by the complainant	Rs.74,65,600/- (as per annexure C-1 on page 22 of complaint)
21.	Occupation certificate /Completion certificate	Not received
22.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That on 04.09.2011, the complainant booked a unit bearing no. I-1703, 17th Floor, Tower I, having 2025 sq.ft. super area in project of the respondent named "SKYZ" at Sector-37-D, Gurugram, Haryana by paying a booking amount of Rs.7,34,063/-.

II. That relying on the assurances, representations, and warranties of the respondent, out of the total sale consideration of Rs.84,38,475/-, the complainant has paid a sum of Rs.74,65,600/- in all by the proposed due date, i.e., 04.09.2014, as and when demanded by the respondent. However, the respondent miserably failed in giving possession of the unit.

III. That the complainant has time and again enquired about the delivery of possession from the respondent and the execution of an agreement, however, the respondent failed to give any update with respect to the construction and completion of the project and its obligations with respect to execution of agreement or delivery of possession of the unit and unilaterally kept of demanding more and more monies.

IV. That after wrongfully enriching itself from the amounts deposited by the complainant, the respondent sent a highly arbitrary, unilateral, and illegal agreement. Further, it is categorically and vehemently highlighted that a copy of the agreement was delivered to the

complainant for its execution on 04.04.2017, i.e., after 2 years and 7 months of passing of the due date of possession.

V. That some of the unfair clauses are reproduced as under, which show that the respondent had intention to retain the unfettered right to:-

a. Create encumbrances on the project/apartment-Cl. 9
b. Treat only payment to be made by the allottee as essence, and not the delivery of the apartment as a matter which is of essence-Cl. 13
c. Impose a much higher rate of interest, with respect to delay of payments-Cl. 14
d. Did not specify due date of possession and provision for automatically and unilaterally extending the date of delivery of possession, for frivolous reasons-Cl. 15
e. Pay a much lesser, meagre amount of compensation, in case of delay of possession-Cl. 17
f. Put the onus of maintenance on the unit holder, without assuming any responsibility of defects-Cl. 20

VI. That despite the same, the fact remains that the construction of the unit has not been completed till date and no possession has been offered.

VII. That the respondent is taking PLC of Rs.2,02,500/-, however, the unit is "not preferentially located" and no justification/clarification has been provided by the respondent with respect to the levy of such amount. Further, the respondent itself has miserably failed in disclosing the preferential location against which the preferential location charge has been levied. Therefore, in such circumstances, the respondent is bound to refund the charge of PLC taken from the complainant.

VIII. That moreover, the respondent has taken car parking charges of Rs.3,00,000/- without having specified if the car parking is covered or not. Accordingly, the respondent should be put at strict proof with respect to the same.

IX. That being aggrieved by the actions of the respondent, the complainant is seeking interest for the delayed period and possession of the unit at the earliest from 04.09.2014 as the respondent had been enjoying the hard-earned money of the complainant since long providing neither the possession nor the interest on delayed period.

X. That the complainant had earlier filed a case before the Hon'ble State Consumer Disputes Redressal Commission, Haryana and the same has been withdrawn by the complainant with leave to file a fresh case before appropriate authority, which has been granted vide order dated 07.07.2022.

XI. That tired of the utterly illegal and unlawful conduct of the respondent, the complainant had no option but to approach this Authority. Hence, the present complaint.

C. Relief sought by the complainant:

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

I. Direct the respondent to hand over the possession of the unit and to pay interest on the paid-up amount at prescribed rate of interest.

II. Direct the respondent to refund the PLC and car parking charges alongwith interest.

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 by filing reply dated 20.12.2022 on the following grounds: -

i. That the complainant having full knowledge of the uncertainties involved have out of his own will and accord has decided to invest in the present futuristic project of the respondent. Therefore, the complainant cannot be said to be genuine consumers by any standards rather he is a mere investor in the futuristic project of the respondent.

ii. That the complainant has deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest. Further, the complainant 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 complainant for which he is solely liable.

iii. 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 complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated 04.09.2011 was made by him 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 him.

iv. That there are various reasons which were 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. due to which the project has been delayed.

v. That the respondent has applied for the mandatory registration of the project with the RERA Authority and has successfully received Registration Certificate No. 320 of 2017 and further has received an extension for completion and development of the project up till 31.12.2023 vide Memo no. 320 of 2017/7(3)/2021/4 dated 20.08.2021 for the project "SKYZ".

vi. That the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed much prior to coming into force of said Act or said Rules.

vii. That the complainant must consider that claims if allowed at this stage would not only stall the project, but the consequences shall be irreparable and irreversible in terms of the interest of all homebuyers of the project. Therefore, the present complaint is not maintainable in its present form and ought to be dismissed with exemplary cost upon the complainant.

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

8. 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

9. 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

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

> ***Section 11***
>
> .....
>
> *(4) 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.*

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

F. Findings on the objections raised by the respondent.

F. I Objection regarding the complainant being investor.

12. The respondent has taken a stand that the complainant is an investor and not a 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 and 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 complainant is a buyer and has paid total price of Rs.74,65,600/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

13. 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 an allottee 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. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr***. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

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

14. Another 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 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 would 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, (Supra)*** 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."*

15. 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."*

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have 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. Further, as per submissions made by the parties as well as documents available on record it is evident that OC/CC has not been issued to the project in question by the competent authority till date. Therefore, the project will be treated as an ongoing project as per section 3 of the Act of 2016 and the provisions of the act as well as rules are duly applicable on it. The same view has also been upheld by the Hon'ble Appellate Tribunal in case titled as ***Emmar MGF Land Ltd. Vs. Ms. Simmi Sikka and Ors. (Appeal no. 52 & 64 of 2018) dated 03.11.2020.*** Hence, in view of the same, objection w.r.t to jurisdiction of the authority stands rejected.

F.III Objections regarding force majeure.

17. The respondent has 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. Further, time taken in governmental clearances cannot be attributed as reason for delay in project. 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 04.09.2014. 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 complainant.

G. I Direct the respondent to hand over the possession of the subject unit and to pay interest on the paid-up amount at prescribed rate of interest.

18. The complainant intends 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)*

19. **Due date of handing over possession:** As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** -:

> *"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the*

refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

20. Accordingly, the due date of possession is calculated as 3 years from the date of booking i.e., 04.09.2011. Therefore, the due date of handing over of the possession for the unit comes out to be 04.09.2014.

21. **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:

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.

22. 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.

23. 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., 21.02.2024 is **8.85%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%.**

24. 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;"*

25. 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 complainant in case of delayed possession charges.

26. 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. The possession of the unit was to be delivered by 04.09.2014. However, the respondent has failed to handover possession of the subject apartment/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 the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate i.e., @10.85% p.a. w.e.f. 04.09.2014 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G. II Direct the respondent to refund the PLC and car parking charges alongwith interest.

27. **Preferred Location Charges (PLC):** The complainant has submitted that the respondent has taken a PLC of Rs.2,02,500/- from the complainant, but the unit of the complainant is "not preferentially located" as no justification/clarification has been provided by the respondent with respect to the levy of such amount. Further, the respondent itself has miserably failed in disclosing the preferential location against which the preferential location charge has been levied. However, the respondent has submitted that the PLC is charged as per the flat preference opted by the buyer and the respondent have no role to play in regards to the flat preference opted by the complainant.

28. After considering the documents available on record as well as submissions made by the parties, it is determined that not even a single document has been placed on record by either of the parties vide which it can be ascertained whether preferential location charges are appliable on the unit of the complainant or not? Thus, the Authority is of view that the respondent/promoter can charge amount on account of preferential location charges from the complainant only on

furnishing details and proof to the complainant about PLC applicability on the unit opted by him within a period of one month failing which the respondent shall refund the amount so collected from the complainant on account of PLC, if any.

29. **Car Parking Charges:** The complainant has submitted that the respondent has illegally charged an amount of Rs.3,00,000/- from him on account of car parking charges without having specified if the car parking is covered or not. However, the respondent has contended that the complainant was very well informed that the parking will be covered parking.

30. The said issue has already been dealt with by the Authority in complaint titled as **Varun Gupta and ors. vs. M/s Emaar MGF Land Ltd. bearing no. 4031 of 2019** wherein, it was held that *open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act of 2016 since it is the part of basic sale price charged against the unit in question as a part of common areas. However as far as the issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force of the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area. Accordingly, in the complaints where the builder has charged for covered car parking, it is justified in doing the same only when the allotted parking area is not included in super area. However, after coming into force of the Act, now the parking in basement cannot be sold and it is part of common areas to be managed by the association of apartment owners.* In the present case, the respondent has itself admitted the fact that the parking will be covered car parking. Accordingly, the respondent-promoter can charge amount only on account of covered car parking

from the complainant subject to furnishing proof w.r.t. covered parking space allocated to him, if any.

H. Directions of the authority

31. 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 complainant against the paid-up amount of Rs.74,65,600/- at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 04.09.2014 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

ii. The arrears of such interest accrued from 04.09.2014 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The respondent-promoter shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.

v. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vi. The respondent/promoter the respondent/promoter can charge amount on account of preferential location charges from the complainant only on furnishing details and proof to the complainant about PLC applicability on the unit opted by him within a period of one month failing which the respondent shall refund the amount so collected from the complainant on account of PLC, if any.

vii. The respondent/promoter can charge amount only on account of covered car parking from the complainant subject to furnishing proof w.r.t. covered parking space allocated to him, if any.

32. Complaint stands disposed of.

33. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.02.2024