

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

**Complaint no.:** 2508 of 2023  
**Date of decision :** 01.03.2024

Nitin Mittal

**R/o:** - C-21B, Ground Floor, South Extension-1, New  
Delhi-110049

**Complainant**

Versus

M/s Ramprashtha Promoters and Developers Private  
Limited.

**Office address:** Plot No. 114, Sector-44, Gurugram-  
122002

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Yogesh Kumar Goyal (Advocate)

Ms. R. Gayatri Mansa (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

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

S. no	Particulars	Details
1.	Project name and location	PRIMERA Sector 37-D, Gurugram
2.	Project area	13.156acre
3.	Nature of project	Residential
4.	RERA registered/not registered	289/2018 dated 23.10.2018
5.	DTPC license no. & validity status	12 of 2009 Dated 21.05.2009 Valid up to 20.05.2024
6.	BBA	11.12.2013 (pg. 50 of complaint)
7.	Unit No.	1604, tower A, 16 <sup>th</sup> floor (pg. 56 of complaint)
	Unit Area admeasuring	1695 sq. ft. (pg. 56 of complaint)
8.	Possession Clause	<b>15(A) Schedule for Possession</b> <i>The developer shall endeavour to complete the construction of the said apartment within a period of 54 months from the date of building plans by office of DGTCP, the allottee agrees and understands that developer shall be entitled to <b>grace period of hundred and twenty (120) days</b>, for applying and obtaining the occupation certificate in respect of the group housing complex.</i>

		(pg. 66 of complaint)
9.	Building plan	25.04.2013 (Taken from website of RERA)
10.	Due date of possession	25.10.2017 (Calculated from the date of Building plan.) Note: Grace period of 120 days not included
11.	Total consideration	₹1,09,95,060/- (As per SOA dated 07.04.2023 at page 111 of complaint))
12.	Total amount paid by the complainant	₹97,07,610/- (As per SOA dated 07.04.2023 at page 111 of complaint)
13.	Occupation certificate	05.04.2023 (pg. 127 of complaint)
14.	Offer of possession	08.04.2023 (pg. 127 of complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- a. That the respondent has issued various advertisement about its project "Primera (TowerA-D) + EWS" (hereinafter referred to as "the said project") at Sector 37 D, Gurugram, Haryana 122001 for inviting application for booking of the unit in this project.
- b. That the complainant had applied for allotment of a residential apartment having area of 1695 Sq. Ft. vide an application form for booking dated 16.10.2012 with "M/s Ramprastha Promoters & Developers Private Limited" project naming "Primera (TowerA-D) + EWS" in Sector 37 D, Gurugram, Haryana 122001.



- c. That the respondent had issued welcome letter for allotted a unit no. A-1604, Primera, Floor-16th, Sector- 37 D, having super area 1695 sq. ft. approx.
- d. That the "apartment buyer agreement" was executed between the complainant and the respondent on 11.12.2013 for the above said allotted unit. As per this agreement the respondent was under obligation to hand over the possession of the property till 24.11.2013 in normal conditions + 120 days for grace period. , i.e. 54 months from the date of approval of building plans + 120 days grace period. "Apartment buyer agreement" as the same is as per the clause no. v of apartment buyer agreement on page no. 19 of that agreement. The possession was required to be given latest till 24.03.2014 (inclusive of grace period).
- e. That the total cost of the flat is ₹1,04,89,769/-. The respondent had issued various demand letters to the complainant and the complainant had paid ₹97,07,610/- till date time to time against these demand letters.
- f. That the respondent had send one email dated 30.07.2019 stating that in case of timely payment made by the complainant the respondent will allow "timely payment rebate scheme" where discount of 8% of the unit's BSP subject to signing of MOU. Further a MOU dated 24.07.2020 was signed between the parties and promised to give the possession of the flat till 15.07.2021.

- g. That the complainant had send various emails to the respondent regarding possession of flat and delayed penalty. But the respondent had never given a satisfactory answer. Further the offer of rebate was declined by the respondent even after issuing offer to the complainant. Further period of possession mention in MOU was also lapsed and the respondent was failed to give possession of the flat.
- h. That the respondent had issued offer of possession through email dated 08.04.2023 without adjusting / allowing delayed interest as per Rera Act, 2016. The respondent is demanding ₹17,07,531/- on offer of possession.
- i. So the complainant has filed the present complaint before this Hon'ble Authority for possession of flat, execution of transfer deed in his favour along with delayed interest as per Rera Act, 2016. As there is grave deficiency of service on the respondent's part so the complainant also wants compensation from the respondent also so after the judgment of this Hon'ble authority the complaint must be transferred before Hon'ble Adjudicating officer for compensation.

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

4. The complainant has sought following relief:
- a. Direct the respondent to give legal and valid possession of unit to the complainant as per Section 18(1) of Rera Act, 2016 with all the amenities as committed in the agreement.

- b. Direct the respondent to pay monthly interest on deposited principal amount for delayed period, as per Section 18(1) read with Section 2(za) of Rera Act, 2016.
- c. Direct the respondent to execute conveyance deed in favour of the complainant as per provisions of section 11(4)(f) read with Section 17 of the Rera act, 2016.
- d. Order the respondent to file the status report with regard to the status of the project.
- e. Order the directors, chief financial officer and company secretary to pay the amounts mentioned supra in the event of failure by the respondents to pay the amounts within 90 days of the order of the RERA Authority.
- f. Order attachment of the assets of the respondents, directors, chief financial officer and company secretary to secure the payment made by innocent investors like the complainant.
- g. Impose penalty on the respondent, directors, chief financial officer and company secretary for not following the law.
- h. Pass an order imposing penalty on the respondent on account of various defaults under RERA Act, 2016.

**D. Reply filed by the respondent:**

5. The respondent has contested the complaint on the following grounds:
  - a. That it is submitted herein that the construction and development of the project was complete prior to the filing of the present complaint. That therefore, in view of the same the

present complaint is not maintainable before this Hon'ble Authority and the same is liable to be dismissed in limine.

- b. That it is submitted herein that the respondent has already received an occupation certificate vide memo no. ZP-695/PA(DK)/2023/9616 dated 05.04.2023. That thereafter vide email dated 08.04.2023 i.e., prior to the filing of the present complaint possession has been offered to the complainant subject to payment of outstanding dues.
- c. That it is due the lackadaisical attitude of the Complainants along with several other reasons beyond the control of the respondent as cited by the respondent which caused the present unpleasant situation. That it is due to the default of the complainants, the allotment could not have been carried out.
- d. That further, even all through these years, the complainants has never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years' only hints at the malafide intentions of the complainants.
- e. That it is submitted herein 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 several installments within the time prescribed, which has also resulted into delay payment charges/ interests.
- f. However, the respondent 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.

- g. That this conduct of the complainants itself claims that the complainants are mere speculative investors who have invested in the property to earn quick profits and due to the falling & harsh real estate market conditions, the complainants are making a desperate attempt herein to quickly grab the possession along with high interests on the basis of concocted facts.
- h. 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.
- i. The below table shows the project name, its size and the current status of the project. It can be seen that the respondent has been diligent in completing its entire project and shall be completing the remaining projects in phased manner. The respondent has completed major projects mentioned below and has been able to provide occupancy to the allottees.
- j. However, since the complainants are short-term speculative investors, their only intention was to make a quick profit from the resale of the unit and having failed to resell the said unit 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 herein that the complainants 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 investors.

- k. That the delay in delivering the possession of the unit to the complainants herein has attributed solely because of the reasons beyond control of the respondents. That thereafter in an unprecedented situation of COVID 19 which has created a havoc in the entire world and has brought the world to a standstill, Ministry of Finance, Government of India in the wake of COVID-19 pandemic has invoked Force Majeure and thereby extended the timelines for completion of real estate projects by 6 months period starting from February, 2020.
- l. 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 unit. Hence the complaint is liable to be dismissed on this ground as well.
- m. That the delay has occurred only due to unforeseen and untackable 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 unit for which respondent cannot be held accountable. However, the complainants 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.

- n. Further the complainants herein is not entitled to claim possession and interest as claimed by the complainants in the complaint is clearly time barred. The complainants have itself not come forward to take up the physical possession of the unit and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainants 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 complainants herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent on their own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainants had any doubts about the project, it is only reasonable to express so at much earlier stage.
- o. Further, filing such complaint after offer of possession at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire

intention of the complainants is made crystal clear with the present complaint and concretizes the status of the complainants 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.

- p. It is evident from the complaint that the complainants were actually waiting for the passage of several years to pounce upon the respondent and drag the respondent in unnecessary legal proceedings. It is submitted that huge costs must be levied on the complainants for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent. It is pertinent to mention here that from the date of booking till the filing of the present complaint, the complainants have never ever raised any issue whatsoever and have now concocted a false story and raised false and frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainants clearly indicates that the complainants are mere speculators having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainants have filed the present complaint on false, frivolous and concocted grounds.
- q. It is submitted by the respondent herein that the Ld. 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 signed by the complainants/allotment offered to him. It is a matter of record and rather a conceded

position that no such agreement, as referred to under the provisions of said Act or said Rules, has been executed between the complainants and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the settlement agreement dated 10.04.2019, executed much prior to coming into force of said Act or said Rules. The adjudication of the complaint for possession, refund, interest and compensation, as provided under Sections 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said Rules and no other agreement. This submission of the respondents inter alia, finds support from reading of the provisions of the said Act and the said Rules. Thus, in view of the submissions made above, no relief can be granted to the complainants.

- r. The complainants persuaded the respondent to allot the said apartment in question to them with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainants.
6. 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 complainants.

7. On last date of hearing dated 17.11.2023 both the parties were directed to file the written submissions within 30 days i.e., by 17.12.2023. No written submissions on behalf of either of the parties have been submitted in the authority till date accordingly, the authority presumes that the parties have nothing to say in addition to what is being stated in their pleadings and reply and has proceeded the matter as per the documents already placed on record.

**E. Jurisdiction of the authority**

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

**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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee 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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.I. Objections regarding the complainant being investor**

12. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby 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 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 apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of ₹97,07,610/- 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 buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the

contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

**F.II. Objection regarding complaint being barred by limitation.**

14. On consideration of the documents available on record and submissions made by the party, the authority observes that the buyer's agreement w.r.t. unit was executed with the complainant on 11.12.2013. Clause 15 of the buyer's agreement dated 11.12.2013, provides for handover of possession which states that the possession of the apartment shall be handed over within a period of within 54 months from the date of building plan approval plus grace period of 120 days for applying and obtaining occupation certificate of the subject unit. The authority calculated due date of possession according to clause 15 of the agreement dated 11.12.2013 from the date of approval of building plan i.e., 25.04.2013. The period of 54 months expired on 25.10.2017. Thereafter, on 08.04.2023 the respondent offered the possession of the unit to the complainant after receiving OC from the competent authority.
15. So, limitation if any, for a cause of action would accrue to the complainant's w.e.f. 08.04.2023. The present complaint seeking possession and delay possession charges was filed on 14.06.2023 i.e., within three years w.e.f. 08.04.2023. Therefore, the complaint is maintainable and not barred by limitation.

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

- G.I. Direct the respondent to give legal and valid possession of unit to the complainant as per Section 18(1) of Rera Act, 2016 with all the amenities as committed in the agreement.**



16. Since, in the present matter OC have been received from the competent authority on 05.04.2023 and it is a pre requisite for handing over of possession and a valid offer of possession has been issued by the respondent after obtaining OC on 08.04.2023 with a demand of ₹17,07,531/- which was without adjustment of the delay possession charges, accordingly the respondent is directed to issue fresh statement of account after adjusting delay possession charges within a period of 15 days from the date of this order and handover the possession of the unit under section 17(2) of the Act, 2016 within a period of 30 days from the date of clearing the outstanding dues.

**G.II. Direct the respondent to pay monthly interest on deposited principal amount for delayed period, as per Section 18(1) read with Section 2(za) of Rera Act, 2016**

17. In the present complaint, 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  
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.*

18. Clause 15 of the buyer's agreement dated 11.12.2013, provides for handover of possession and is reproduced below:

*"The developer shall endeavour to complete the construction of the said apartment **within a period of 54 months from the date of building plans by office of DGTCP**, the allottee agrees and understands that*

*developer shall be entitled to grace period of hundred and twenty (120) days, for applying and obtaining the occupation certificate in respect of the group housing complex.”*

19. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
20. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of within 54 months from the date of building plan approval plus grace period of 120 days for applying and obtaining occupation certificate of the

subject unit. The authority calculated due date of possession according to clause 15 of the agreement dated 11.12.2013 from the date of approval of building plan i.e., 25.04.2013. The period of 54 months expired on 25.10.2017. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. However, 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., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
24. In the present matter it was stated by the counsel of respondent during the course of hearing that the complainant entered into an understanding vide which the complainant waived his right for seeking penalty from the respondent due to delay in construction of the said unit. Further as per clause 2 revised due date of possession was agreed between the parties as 15.07.2021 and accordingly, any delay possession charges if payable are to be paid from 15.07.2021 and not from the original date of possession.
25. The relevant clause of the said understanding dated 24.07.2020 which is reproduced hereunder:

*"We understand that Suraksha ARC (Lender to Project Primera) is helping us, and therefore, we confirm that we shall not initiate any litigation against either RPDPL, Suraksha or SWAMIH, and shall not obtain any order from any judicial forum which shall, in any manner, restrain, stay or delay construction of the Project. this understanding is valid till 15 July 2021 (date of possession as confirmed during 4<sup>th</sup> July 2020 meeting) and RPDPL ensure Primer project delivery in all aspects (to name few -unit, club house facilities, green area, power backup"*

26. The authority after due consideration opines that the said clause only restrain the complainant from initiating any judicial proceedings against the respondent till 15.07.2021 which was considered as the revised date of possession, but since the respondent offered the said unit on 08.04.2023 i.e., even after the revised date of possession. Accordingly, the respondent cannot force to act the opposite party in consonance with the said understanding when the respondent itself has failed to abide by the terms and has breached the said understanding dated 24.07.2020.
27. On consideration of the documents available on record and submissions made 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. By virtue of clause 15 of the agreement executed between the parties on 11.12.2013, the possession of the subject apartment was to be delivered within 54 months from the date of building plan approval. The period of 54 months expired on 25.10.2017. As far as grace period of 120 days is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 25.10.2017. The respondent has offered the possession of the subject apartment on 08.04.2023 after receiving OC from the competent authority on 05.04.2023. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 25.10.2017 till date of offer of possession plus two months i.e., 08.06.2023 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.

**G.III. Direct the respondent to execute conveyance deed in favour of the complainant as per provisions of section 11(4)(f) read with Section 17 of the Rera act, 2016**

28. As per Section 17 (1) of Act of 2016, the respondent is under obligation to get the conveyance deed executed. In the present case the possession of the allotted unit has yet not taken by the complainant/allottee. Therefore, the respondent is directed to handover the possession of the subject apartment complete in all aspects and thereafter, execute a conveyance deed in favor of complainant within a period of three months from the date of handing over the unit.

**G.IV. Order the respondent to file the status report with regard to the status of the project.**

**G.V. Order the directors, chief financial officer and company secretary to pay the amounts mentioned supra in the event of failure by the respondents to pay the amounts within 90 days of the order of the RERA Authority.**

**G.VI. Order attachment of the assets of the respondents, directors, chief financial officer and company secretary to secure the payment made by innocent investors like the complainant**

29. The above mentioned reliefs were neither pleaded by the complainant in his pleadings nor argued by the counsel for the complainant during the course of hearing. Accordingly, the above mentioned reliefs stands redundant.

**G.VII. Impose penalty on the respondent, directors, chief financial officer and company secretary for not following the law.**

**G.VIII. Pass an order imposing penalty on the respondent on account of various defaults under RERA Act, 2016**

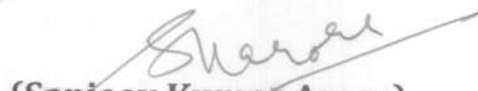
30. The complainant has not mentioned any specific provision of law which have been violated by the respondent except for section 18 of the Act. To which the authority has already deliberated in relief no. 1. Accordingly, the authority cannot deliberate up on the above mentioned reliefs.

**H. Directions of the authority**

31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- a. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 25.10.2017 till date of offer of possession plus two months i.e., 08.06.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondent is directed to execute a conveyance deed in favor of complainants within a period of three months from the date of handing over the unit in terms of section 17 of the Act.
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days from the date of this order and the respondent shall handover the possession in next 30 days to the complainants/allottees.

- d. 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 promoters 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.
- e. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
32. Complaint stands disposed of.
33. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024