

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

Complaint no.: 1214 of 2023
Date of complaint: 15.03.2023
Date of order: 24.10.2024

1. Vijay Kumar
2. Sonali Rajak
Both R/o: - Flat no. 29 1st Floor,
L & T Flats (Shree Awas) Sector 18B,
Dwarka, New Delhi 110075.

Complainants

Versus

M/s Ramprastha Promoters and
Developers Pvt. Ltd.
Regd. office at: - 114, Sector-44,
Gurugram-122002.

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Sandeep Phogat (Advocate)
Shri R. Gayathri Mansa (Advocate)

Complainants
Respondent

ORDER

1. This has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or

the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Primera", Sector 37D, Village Gadauli Kalan, Gurugram, Haryana
2.	Project area	13.156 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	12 of 2009 dated 21.05.2009 Valid up to 20.05.2024
5.	Name of licensee	Ramprastha Realtor Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. no. 21 of 2018 dated 23.10.2018 for an area of 3.257 acres Valid up to 31.03.2020
7.	Date of approval of building plans	25.04.2013 (As per information obtained by planning branch)
8.	Unit no.	F-303, 3 rd floor, tower B (Page no. 56 of the complaint)
9.	Unit admeasuring	1720 sq. ft. (Page no. 56 of the complaint)
10.	Welcome letter	Undated (Page no. 48 of the complaint)
11.	Allotment letter	Not available
12.	Date of execution of apartment buyer's agreement	14.09.2013 (Page no. 52 of the complaint)
13.	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

		<p>and compliance with all provisions, formalities, documentation etc., as prescribed by the DEVELOPER, the DEVELOPER shall endeavor to complete the construction of the Said Apartment within a period of 54 months from the date of approval of Building Plans by the office of DGTCP. The Allottee agrees and understands that the DEVELOPER shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex. (Emphasis supplied)</p> <p>(Page no. 66 of the complaint)</p>
14.	Due date of possession	<p>23.02.2018 (calculated by the 54 months from approval of building plans i.e., 25.04.2013 including grace period)</p>
15.	Total sale consideration	<p>Rs.1,09,47,727/- (As per payment plan annexed with the buyer's agreement on page no. 79 of complaint)</p>
16.	Amount paid by the complainant	<p>Rs.1,01,67,151/- (As per account statement dated 03.02.2023 on page no.162 of complaint)</p>
17.	Occupation certificate /Completion certificate	<p>05.04.2023 (as per DTCP site)</p>
18.	Offer of possession	<p>08.04.2023 (as submitted by complainant in its application filed on 21.08.2023)</p>
19.	Possession letter	<p>19.10.2023 (additional documents submitted by complainant)</p>

B. Facts of the complaint

3. The complainants have made the following submissions: -

1. That the respondent in the year 2009 applied and obtained licence no. 12 of 2009 dated 21.05.2009 which is valid up to 20.05.2024 for a group Housing Colony to be developed in the name of "Primera" situated in Sector 37D,

- Village Gadauli Kalan, Gurugram. The building plan approvals were obtained by respondent in respect of present project on 24.04.2013.
- II. That the complainants booked a 3 BHK flat unit no. 303, 3rd floor, Block-B, admeasuring super area 1720 sq. ft. along with two car parking space at "PRIMERA" in Sector-37D, Gurugram, Haryana, for a total sale consideration of Rs.1,09,47,727/- including PLC, IFMS, EDC & IDC. Further, an apartment buyer's agreement dated 14.09.2013 was executed between the parties in this regard.
- III. That the respondent assured the complainants that they shall hand over the possession of the said apartment within a period of 54 months, in terms of clause 15 of the apartment buyer agreement dated 14.09.2013 excluding grace period of 6 months from the date of sanctioning of building plans. As per clause 15(a) of the said agreement, the respondent was to handover the possession of the said apartment on or before 25.10.2017.
- IV. That as per the payment plan, the complainants made the payments towards the said apartment as demanded by the respondent from time to time. The respondents have demanded total amount of Rs. 1,01,67,151/- through various instalments wherein the complainants have paid the entire demanded amount to the respondent on time.
- V. That since September 2013 to 03.02.2023, the respondent had received a total sum of Rs.1,01,67,151/- from the complainants as demanded by the respondent as per payment plan. After receiving above 95% payment from the complainants, the respondent has not handed over the possession of the said apartment to the complainants till date. The project is yet to be completed despite passage of more than 5 ½ years from the expected/scheduled date of possession i.e. 25.10.2017.

- VI. In the meantime, the respondent in July 2019 sent a MOU to the complainants for signing the same, but the complainants did not sign the same as the same supersedes the terms and conditions of the earlier agreement dated 14.09.2013 executed between the parties and the same was informed by complainant no. 1 vide email dated 21.02.2023.
- VII. That the complainants have been constantly pursuing and following up with the respondent, however no response has been received. But inspite of repeated requests verbally and telephonically of the complainants, the respondent has not handed over the possession of the said apartment to the complainants till date.
- VIII. That in this way, the respondent has committed fraud upon the complainants by misappropriating the funds paid by them. The action of the respondent tantamount to unfair trade practice and deficiency in service by breaching the terms and conditions of the said agreement. The respondent has also betrayed the trust imposed upon by the complainants. As such, the respondent is liable to pay interest @ 1.5% per month compounded quarterly on account of delayed possession w.e.f. from the date of payment or latest by 25.10.2017 till the handing over the possession of the said apartment to the complainants at the spot.
- IX. That due to the illegal and deliberate wrongful act of the respondent, the complainants suffered mental pain, agony and physical harassment and so, the respondent is also liable to compensate the complainants for the same.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondent to pay delay possession charges
- ii. Direct the respondent to handover the possession.
- iii. Award litigation cost of Rs.5,00,000/-.

iv. Award pendent lite and future interest @ future interest @1.5% per month compounded quarterly on sums awarded by the authority to the complainant against complainant against the respondent as per proviso of Section 18(1) of the Act read with the rules.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.

- i. The complainants are seeking delay possession charges on the amount of Rs 1,01,67,151/- paid against the booking of Unit No. B-303, located on the 3rd floor, admeasuring 1720 sq. ft., in the respondent's project, "PRIMERA." The respondent has approached the complainants to take physical possession of the said unit, but the complainants have wilfully failed to come forward with the requisite documents to take over possession. The respondent also sent an email to the complainants on 16.06.2023.
- ii. That the complainants have not approached the authority with clean hands, as they have deliberately failed to make timely payments of instalments, resulting in delay payment charges and interest, as reflected in the statement of accounts. Due to the complainants' lackadaisical attitude, as well as several reasons beyond the respondent's control, possession could not be handed over. Despite the ongoing situation, the complainants have never raised any dispute regarding possession or any other issues until now, further suggesting their malafide intentions
- iii. That the complainants waited all these years to raise disputes, perhaps to reap the benefits of increased property value. Filing a complaint at this stage hints at malafide intention of the complainants and is likely an attempt to harm the interests of the builder and other genuine allottees. If any

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objections were to be raised, they should have been done within a reasonable time to avoid prejudicing other parties. The complainants cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainants had any doubts about the project, it is only reasonable to express so at much earlier stage.

- iv. That filing of this complaint after such a long delay also suggests the complainants' intention to arm-twist the respondent. It becomes clear that the complainants are mere investors who initially invested in the project solely to capitalize on the appreciation in property rates. Their actions, including filing the present complaint, are evidently intended to extract exaggerated returns on their investment, rather than being driven by genuine grievances related to possession.
- v. Additionally, the complainants have concealed their own defaults in failing to make timely payments, which contributed to the delay in possession. The respondent, on the other hand, has borne financial losses and additional costs due to these delayed payments but has always endeavoured to serve buyers with the utmost good faith and business ethics. However, now despite of its efforts and endeavours 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 complainants.
- vi. That 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

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of villages etc. The complainants while investing in a unit which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the 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.

- vii. That the delay has occurred only due to unforeseen and un-tackle able 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.
- viii. Furthermore, the respondent has successfully registered the project under RERA and has completed the construction, despite various adversities in the real estate market. The respondent's efforts to hand over possession at the earliest possible time highlight the commitment to fulfilling the buyers' expectations. However, the respondent cannot be held liable for delays caused by regulatory issues beyond its control, including delays in project registration or layout approval.
- ix. That the complainants were well aware of these potential delays and voluntarily accepted the associated risks when investing in the project. The absence of any prior objections from the complainants further weakens

their current claims of delay in possession. Instead, their conduct reflects an intent to speculate on the property's value rather than a genuine interest in timely possession.

- x. Further, the complainants herein are not entitled to claim DPC as claimed by the complainants in the complaint as it is clearly time barred. 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 its 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. 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. The entire intention of the complainants is made crystal clear with the present complaint and concretes the status of the complainants as investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

7. All other averments made in the complaint were denied in toto.

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 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding the complainants being investor.

13. The respondent has taken a stand that the complainants are investors and not consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims 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 complainants are buyers and paid total price of Rs.1,01,67,151/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act.

As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 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 investor are not entitled to protection of this Act also stands rejected.

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

15. The respondent contended that the project was delayed because of the 'force majeure' situations like passing of an HT line over the layout, road deviations and incorrect depiction of villages, approval of layout plans etc. which were beyond the control of respondent. However, no document in support of its claim has been placed on record by the respondent. Hence, all the pleas advanced in this regard are devoid of merits. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong. Therefore, the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

F.III Objection regarding complaint being time barred.

16. 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 complainants on 14.09.2013. Clause 15 of the buyer's agreement dated 14.09.2013, 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 14.09.2013 from the date of approval of building plan i.e., 25.04.2013. The period of 54 months expired on 23.02.2018 including grace period of 120 days. Thereafter, on 08.04.2023 the respondent offered the possession of the unit to the complainants after receiving OC from the competent authority.

17. So, limitation if any, for a cause of action would accrue to the complainant's w.e.f. 08.04.2023. The present complaint, which seeks possession and delay possession charges was filed on 15.03.2023 before the offer of possession was made. Therefore, the complaint is maintainable and not barred by limitation.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to pay delay possession charges.

18. In the present complaint, the complainants 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)

19. Clause 15(a) of the apartment buyer's agreement provides for handing over of possession and is reproduced below:

"15. POSSESSION

(a). Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA shall endeavour to complete

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the construction of the said Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP. The Allottee agrees and understands that RAMPRASTHA 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."

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

21. Due date of handing over possession and admissibility of grace period:

The promoter has proposed to hand over the possession of the apartment within a period of 54 months from the date of approval of building plans i.e., 25.04.2013 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex.

22. In the present case, the promoter is seeking 120 days as grace period for applying and obtaining occupation certificate. The Authority relying on the judgement of the *Hon'ble Appellate Tribunal in appeal no. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*, wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of 90 days for applying and obtaining the occupation certificate. The relevant para of the above-mentioned judgement is reproduced below:

As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.

23. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus, the due date of handing over of possession comes out to be 23.02.2018.

24. 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.

25. 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.

26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 24.10.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent /promoter

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which is the same as is being granted to the complainants in case of delayed possession charges.

29. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the apartment buyer's agreement executed between the parties on 14.09.2013, the possession of the subject unit was to be delivered within a period of 54 months from the date of approval of building plans i.e., 25.04.2013 which comes out to be 23.02.2018 including grace period of 120 days. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 14.09.2013 executed between the parties. Occupation certificate was granted by the concerned authority on 05.04.2023 and thereafter, the possession of the subject unit was offered to the complainant on 08.04.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit within the agreed time frame and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 14.09.2013 to hand over the possession within the stipulated period.
30. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted

by the competent authority on 05.04.2023. The respondent offered the possession of the unit in question to the complainants only on 08.04.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (08.04.2023) which comes out to be 08.06.2023.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @11.10% p.a. w.e.f. 23.02.2018 till the expiry of 2 months from the date of offer of possession (08.04.2023) which comes out to be 08.06.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.II Direct the respondent to handover the possession.

32. The complainant filed the present complaint before the Authority seeking for physical possession of the allotted unit along with delay possession charges. The complainant itself has placed on record a possession certificate dated 19.10.2023. Moreover, the counsel for complainant during proceedings dated 07.03.2024 submitted that the physical possession of the subject unit has been taken over on 26.10.2023. Consequently, no further directions can

be issued concerning the relief sought for handing over of physical possession.

G.III Award litigation cost of Rs.5,00,000/-.

33. The complainant is seeking above mentioned relief w.r.t. litigation cost. ***Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses.

G.IV Award pendent lite and future interest @ future interest @1.5% per month compounded quarterly on sums awarded by the authority to the complainant against complainant against the respondent as per proviso of Section 18(1) of the Act read with the rules.

34. The counsel for the complainants during the course of proceedings dated 12.09.2024 submitted that they are not pressing for the abovementioned relief. Hence, in lieu of the submission made by the counsel for the complainant, the Authority cannot deliberate upon the above-sought relief.

H. Directions of the authority.

35. 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 is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 23.02.2018 till



expiry of 2 months from the date of offer of possession (08.04.2023) i.e., up to 08.06.2023 only as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and no holding charges shall be levied as per law settled by ***Hon'ble Supreme Court in Civil Appeal no. 3864-3899/2020 decided on 14.12.2020.***

36. Complaint stands disposed of.

37. File be consigned to registry.

Dated: 24.10.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram