

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

Complaint no. : 4423 of 2020
First date of hearing: 15.01.2021
Date of decision : 24.03.2021

1. Mr. Jivesh Govil
 2. Mrs. Tanushree Govil
- Both RR/o: - A-63, Lok Vihar,
Pitampura New Delhi- 110034

Complainants

Versus

M/s Ramprashtha Promoters and
Developers Private Limited.
Regd. office: C-10, C-Block Market,
Vasant Vihar, New Delhi- 110057.
Also at: - Plot No. 114, Sector-44,
Gurugram-122002

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

Chairman
Member
Member

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APPEARANCE:

Sh. Vijender Parmar
Sh. Dheeraj Kapoor

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 04.12.2020 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of 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.	Heads	Information
1.	Project name and location	"Ramprastha City" Sector-37C & 37D, Gurugram.
2.	Project area	105.402 acres



3.	Nature of the project	Residential colony
4.	DTCP license no. and validity status	128 of 2012 dated 28.12.2012 valid till 27.12.2016
5.	Name of licensee	B.S.Y. Developers Pvt. Ltd. and 35 others
6.	RERA Registered/not registered	Not registered
7.	Unit no.	plot no. 282, block- B [Page 22 of complaint]
8.	Unit measuring	300 sq. yds.
9.	Allotment letter	14.11.2015 [Page 16 of complaint]
10.	Date of execution of plot buyer agreement	14.11.2015 [Page 19 of complaint]
11.	Payment plan	Possession linked payment plan. [Page 35 of complaint]
12.	Total consideration	Rs.1,30,80,000/- [as per payment plan page no 35 of complainant]
13.	Total amount paid by the complainants	Rs.1,25,70,000/- [as per receipt information page no 41&42 of complainant]
14.	Due date of delivery of possession as per clause 11 of the apartment buyer agreement: 30 months from the date of execution of agreement [Page 26 of complaint]	14.05.2018
15.	Delay in handing over possession till date of this order i.e. 24.03.2021	2 years 10 months and 10 days

B. Fact of the complaint



3. The complainants have submitted that the respondent gave advertisement in various leading Newspapers about their forthcoming project named "The Ramprastha City" sector 37C & 37D, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. The companies staff member, channel partner "Accolades Developers" and the Ramprastha CEO (Mr. Nikhil Jain) had repeated visits to the residence of the complainant between July 2012 till September 2012 and assured the client by narrating that the company has acquired 500 acres of land and is developing into residential plot at sector 37D, Gurugram. The respondent assured that the possession will be given in next 6 to 10 months' time and further narrated that the land is situated at prime place near proposed metro station and thus allured the complainant to invest their hard-earned money for immediate pre-launch offer of residential plot at sector 37D, Gurugram. They further stated that the priority allotment will be done to those members who will pay full amount of plot along with external development charges and infrastructure development charges, inducing client for 95% upfront payment.
4. The complainants further submitted that the respondent in the advertisements and several personal visits at the residence of the complainants, the complainants booked a



plot admeasuring 300 sq. yds. i.e. in aforesaid project of the respondent for total sale consideration of Rs.1,30,80,000/- which includes BSP, development charges, Government charges, IFMS, car parking, club membership, PLC, etc. and made payment of Rs.1,25,70,000/- to the respondent vide different cheques on different dates with 86.5% of total sale consideration completed by Nov. 2012 and 96.5% total sale consideration completed by November 2015. That due to sudden demise of Sh. R.N Govil (2nd joint holder), the plot was endorsed in the name of Mr. Jivesh Govil and Ms. Tanushree Govil on dated 28.10.2020.

5. The respondent had been allotted a plot bearing no B-282 in block-B having area of 300 sq. yds. to the complainants. That as per para-no.11 of the plot buyer agreement, the respondent had agreed to deliver the possession of the plot within 30 months from date of execution of the agreement plus a grace period of six months. The complainant made payment of Rs. 1,25,70,000/- to the respondent vide different cheques on different dates with 86.5% of total sale consideration completed by November 2012 and 96.5% total sale consideration completed by November 2015.
6. That complainants regularly visited the site upto three times per year from 2012 to 2020 but was always surprised to see that construction work has been initiated even after 8 years



of payment and no one was present at the site to address the queries of the complainant. It appears that respondent had malafide intentions to induce complainant to part with their hard-earned money. The only intention of the respondent was to take payments for the plot without completing any iota of work. The respondent had dishonest motives and intentions to cheat and defrauded the complainant by selling untruthful dreams. That despite receiving payments for all the demands raised by the respondent for the said plot and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has miserably failed to deliver the possession of the allotted plot to the complainants within stipulated period.

7. The complainants submitted that has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the flat in question or to refund the amount along with interest @ 18% per annum on the amount deposited by the complainants, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount and wrongfully gained himself and caused wrongful loss to the complainants.

C Relief sought by the complainants:

8. The complainants have sought following relief(s)



- I. To direct the respondent to handover the possession of the flat along with prescribed interest per annum on compounded rate from the promissory date of delivery of the flat in question
9. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

10. The respondent has filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondent contested the complaint on the following grounds:

- I. The complaint filed by the complainants is not maintainable and the Haryana Real Estate Regulatory Authority, Gurugram, Haryana has no jurisdiction whatsoever to entertain the present complaint. According to the respondent, the jurisdiction to entertain the complaints pertaining to refund, possession, compensation, and interest i.e. prescribed under sections 12, 14, 18 and section 19 of the Act lies with the adjudicating officer under sections 31 and 71 read with rule 29 of the rules.



II. In the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint and is seeking the relief of possession, interest, and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e. "Ramprastha City", Sector-37C & 37D, Gurgaon is covered under the definition of "ongoing projects" and RERA registration has already been applied and the registration certificate is still awaited with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before this authority under rule 28 as this authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

III. That now, in terms of the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 (hereinafter referred to as the "said amendment rules"), the complainants have filed the present complaint under the amended rule-28 (but not in the amended 'Form CRA') and is seeking the relief of possession, interest and compensation u/s 18 of the said Act.



IV. That statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and consumers as explained herein below:

- a. The authority has no jurisdiction to entertain the present complaint has not come to this authority with clean hands and has concealed the material fact that apart from the plot no. B-282 in the said project, for which the complainants have filed the present complaint, the complainant, has also invested in one more plot i.e. B-65 in the same project of the respondent, for which the complainants have filed a separate complaint i.e. complaint No. 4479/20, which is also pending adjudication before authority. The complainant has invested in two residential units in the same project of the respondent for earning profits and the transaction therefore is relatable to



commercial purpose and the complainant not being a 'consumer' within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the said Act. This has been the consistent view of the Hon'ble National Consumer Disputes Redressal Commission in a number of cases wherein it has been held that even when a consumer has booked more than one unit of residential premises; it amounts to booking of such premises for investment/commercial purpose.

- b. The Complainants, who are already the owners of A-63, Lok Vihar, Pitampura, New Delhi-110034 (address mentioned in the booking application form, plot buyer's agreement and in the present complaint) are investors, having invested in two units in the same project of the Respondent and who never had any intention to buy the apartment for their own personal use and kept on avoiding the performance of their contractual obligations and have now filed the present complaint on false and frivolous grounds.
- V. The complainants are investors and not consumers and nowhere in the present complaint have the complainants pleaded as to how the complainants are consumers as defined in the Consumer Protection Act,



1986 qua the respondent. The complainants, who are already the owners of A-63, Lok Vihar, Pitampura, New Delhi- 110034 (address mentioned in the booking application form, plot buyer agreement) are who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds.

VI. Despite several adversities, the respondent has continued with the development of the said project and is in the process of completing the development of the project and subject to the force majeure conditions, as detailed hereinafter, should be able to apply the occupation/part completion certificate by 31.12.2022 (as mentioned in the application filed for registration of the said projects with RERA) or within such extended time, as may be extended by the Authority, as the case may be. However, as the complainants were only short term and speculative investors, therefore they were not interested in taking over the possession of the said apartment. It is apparent that the complainants had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession and because of slump in the real

estate market, the complainants have developed an intention to raise false and frivolous issues to engage the respondents in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainants has origin and motive in sluggish real estate market.

- VII. That this authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties *inter se* in accordance with the plot buyer's agreement 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 plot buyer agreement dated 14.11.2015, executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for 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.

VIII. The respondent submitted that the proposed estimated time of handing over the possession of the said plot i.e. 30 months plus 6 months, from the date of execution of plot buyer agreement i.e. 14.11.2015 which comes to 14.11.2018, is applicable only subject to force majeure and the complainants having complied with all the terms and conditions and not being in default of any the terms and conditions of the plot, including but not limited to the payment of instalments. In case of any default/delay in payment, the date of handing over of possession shall be extended accordingly solely at the respondent's discretion, till the payment of all outstanding amounts and at the same time in case of any default, the complainants will not be entitled to any compensation whatsoever in terms of clause 11 of the plot buyer's agreement.

IX. That section 19(3) of the Act provides that the allottee shall be entitled to claim the possession of the apartment, plot, or building, as the case may be, as per the declaration given by the promoter under section 4(2)(I)(C). The entitlement to claim the possession or

refund would only arise once the possession has not been handed over as per the declaration given by the promoter under section 4(2)(1)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(1)(C) that it would complete the project by 31.12.2022 or within such extended time, as may be extended by the authority. Thus, no cause of action can be said to have arisen to the complainants in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.

- X. The projects in respect of which the respondent has obtained the occupation certificate are described as hereunder: -

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

			applied
6.	Rise	322	OC to be applied

XI. The respondent has submitted in its reply that there was no intentional delay in the construction on the part of the respondent. Delay was due to reasons detailed in the reply which were beyond its control.

- The respondent had made an application for grant of license under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the '1975 Act') and the Rules framed thereunder (hereinafter referred to as the '1976 Rules'), for development of residential plotted colony and was granted Letter of Intent (LoI) being Memo No.LC-2485-JE(B)-2011/6848 dated May 24, 2011 for development of residential plotted colony over land admeasuring 108.339 acres (which area had got reduced to 105.402 acres), situated in Village Basai, Gadauli Kalan, sector-37C and 37D, Tehsil and District Gurugram.
- The respondent was asked to fulfill certain requirements/pre-requisites, as had been mentioned therein, which obligations were not

only limited to deposit of amounts towards fee and charges, but even extended to furnishing of certain undertaking and taking steps/making compliances, as required. The respondent had been, *inter alia*, asked to submit layout plan of the colony as per the approved circulation plan of sector before grant of license.

- That after having made all the compliances, including but not limited to depositing of amount towards fee and charges and furnishing Bank guarantees and also undertakings and submissions of layout plan, the respondent was granted License No.128 of 2012 dated December 28, 2012. The respondent executed all requisite agreements, as required under the provisions of the 1975 Act and 1976 Rules.
- That the final layout plan that had been submitted in terms of the compliances of the one of the conditions of LoI, was approved on September 28, 2012.
- That the respondent applied for grant of No Objection Certificate from the office of Haryana Urban Development Authority (**HUDA**), which had been granted on July 8, 2013. It may not be

out of place to mention here that the respondent has spent 100's of crores of rupees on development towards land cost, license fee, scrutiny fee, conversion charges, infrastructural development charges, external development charges and other developmental charges. Evidently, the respondent's bona fide to develop the colony is apparent from the face of the records.

11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The application of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below: -

E.I Territorial jurisdiction

12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose



with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

13. The respondent has contended that the relief regarding refund and compensation are within the jurisdiction of the adjudicating officer and jurisdiction w.r.t the same does not lie with the authority. It seems that the reply given by the respondents is without going through the facts of the complaint as the same is totally out of context. The complainants have nowhere sought the relief of refund and regarding compensation part the complainant has stated that he is reserving the right for compensation and at present he is seeking only delay possession charges. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and anr.*



F. Findings on the objections raised by the respondents

F.I Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of RERA Act

14. The counsel for the respondents has raised objection that the entitlement to claim possession or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
15. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
16. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act. The same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —

.....

(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —



(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”

17. The time period for handing over the possession is committed by the builder as per the relevant clause of plot buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project under section 3 and 4 of the Act does not change the commitment of the promoter to hand over the possession by the due date as per the plot buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project one the purposes behind is that after doing so the promoters shall not be liable to be penalized to be violation of section 3 of under section 59 of the act. Thus, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by



him in the plot buyer's agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The same issue has been dealt by hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.* and has observed 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..."

F.II Objection regarding entitlement of DPC on ground of complainant being investor

18. The respondent has taken a stand that the complainant is the investor and not consumer, 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 respondents have also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the 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 enabling provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the plot buyer's agreement in question, it is revealed that the complainant is buyer and they have paid total price of Rs.1,25,70,000/- to the promoters towards purchase of a plot in the project of the promoters. 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;"

In view of abovementioned definition of "allottee" as well as all the terms and conditions of the plot buyer's agreement executed between promoters and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoters. 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 an investor is not entitled to protection of this Act also stands rejected.

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

19. 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 plot buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then



that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

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

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

20. 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."

21. 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.

G. Findings on the relief sought by the complainant

Relief sought by the complainant: To direct the respondents to pay the interest at the rate of 18% P.A. on the amount of Rs.1,25,70,000/- for the said residential plot on account of delay in offering possession from the date of



payment till delivery of physical and vacant possession of said residential plot.

22. 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

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."

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

"11. Schedule for possession

(a) "The company shall endeavour to offer possession of the said plot, within thirty (30) months with another grace period of six (6) months from the date of execution of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan."

24. At the outset it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment by the intending complainant of total price, stamp duty, registration charges



and any other changes due and payable according to the payment plan. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the plot buyer's 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 allottee is left with no option but to sign on the dotted lines.

25. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the plot within 30 months from the date of execution of this agreement then after the expiry of grace period of 6 months from the said 30 months subject to the intending allottee having paid all payments as per the payment plan and subject to the terms and conditions of this agreement. As a matter of record, the various receipts issued by the promoter/respondent company in favour of complainant/allottee which amount are approximately 90%



of the total sale consideration. According to payment plan the allottee/complainant are fulfilled all certain terms and conditions of the agreement. The respondent has failed to provide any such document which can prove that the intending allottee has not done timely payment. Hence, the promoter/respondent company fails to provide the possession of the plot within stipulated time. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.

26. **Payment 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.



27. 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. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka (Supra)** observed as under: -

"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

28. 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., 24.03.2021 is 7.30%. Accordingly, the

prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

29. 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;"*

30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the



section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the agreement executed between the parties on 14.11.2015, the possession of the subject plot was to be delivered within a period of 30 months from the date of execution of this agreement which comes out to be 14.05.2018. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 14.05.2018. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents/promoters 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., 14.05.2018 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

32. The allottee requested for fresh statement of account of the unit based on the above determinations of the authority.

H. Directions of the authority

33. 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 at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 14.05.2018 till the date of handing over possession.
- ii. The promoters may credit delay possession charges in the account ledger/statement of account of the unit of the allottee, if the amount outstanding against the allottee is more than the DPC this will be treated as sufficient compliance of this order.
- iii. If there is no amount outstanding against the allottee or less amount outstanding against the allottee then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottee.
- iv. The arrears of such interest accrued from 14.05.2018 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.

- v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which are 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.
- vii. 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 promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020.
- viii. The promoter is directed to furnish to the allottee statement of account within one month of issue of this order. If there is any objection by the allottee on statement of account, the same be filed with promoter after fifteen days thereafter. In case the grievance of the allottee relating to statement of account is not settled by

the promoter within 15 days thereafter then the allottee may approach the authority by filing separate application.

34. Complaint stands disposed of.
35. File be consigned to registry.


(Samir Kumar)
Member

V.I 
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.03.2021 सत्यमेव जयते
Judgement uploaded on 08.06.2021