

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

Complaint no. : 3209 of 2020
First date of hearing: 17.11.2020
Date of decision : 24.03.2021

Namit Kapoor
R/o: - 109, Munrika Vihar,
New Delhi- 110067

Complainant

Versus

1. M/s Ramprashtha Promoters and Developers Private Limited.
 2. Ramprashtha Developers Private Limited.
- Both Having Regd. office: Plot No. 114,
Sector-44, Gurugram-122002।त्यमेव जयते

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Sh. Govind Rishi
Sh. Dheeraj Kapoor

Advocate for the complainant
Advocate for the respondents

ORDER

1. The present complaint dated 12.10.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation

of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Unit no.	Plot No. D-223, Block- D [Page 37 of complaint]
2.	Unit measuring	300 sq. yds.
3.	Date of allotment letter	18.12.2013 [Page 29 of complaint]
4.	Date of execution of plot buyer agreement	28.12.2013 [Page 34 of complaint]
5.	Payment plan	Possession linked payment plan [Page 49 of complaint]
6.	Total consideration	Rs.53,10,000/- [as per payment plan Page 49 of complaint]
7.	Total amount paid by the complainant	Rs.47,73,000/- [as submitted by complaint page no 20, of complaint not disputed]

		by respondents in his submission]
8.	Due date of delivery of possession as per clause 11(a) of the plot buyer agreement: 30 months from the date of execution of agreement [Page 40&41 of complaint]	28.06.2016
9.	Delay in handing over possession till date of this order i.e. 24.03.2021	4 Year 2 month and 24 days

3. The particulars of the project namely, "Ramprastha City" as provided by the registration branch of the authority are as under:

Project related details			
1.	Name of the promoter	M/s Ramprastha Estates Pvt. Ltd.	
2.	Name of the project	Ramprastha City	
3.	Location of the project	Sector- 92, 93 & 95, Gurugram	
4.	Nature of the project	Residential Plotted Colony	
5.	Whether project is new or ongoing	Ongoing	
6.	Registered as whole/phase	Whole	
7.	If developed in phase, then phase no.	N/A	
8.	Total no. of phases in which it is proposed to be developed, if any	N/A	
9.	HARERA registration no.	13 of 2020	
10.	Registration certificate	Date	Validity
		05.06.2020	31.12.2024
11.	Area registered	128.594 acres	

12.	Extension applied on	N/A	
13.	Extension certificate no.	Date	Validity
		N/A	N/A
Licence related details of the project			
1.	DTCP license no.	44 of 2010 dated 09.06.2010	
2.	License validity/ renewal period	08.06.2016	
3.	Licensed area	128.594 acres	
4.	Name of the license holder	M/s Ramprastha Housing Pvt. Ltd. and Others	
5.	Name of the collaborator	M/s Ramprastha Estates Pvt. Ltd.	
6.	Name of the developer/s in case of development and/or marketing agreement entered into after obtaining license.	N/A	
7.	Whether BIP permission has been obtained from DTCP	N/A	
Time schedule for completion of the project			
1.	Date of commencement of the project	15.07.2019	
Details of statutory approvals obtained			
S.N.	Particulars	Approval no and date	Validity
1.	Approved building plan	N/A	N/A
2.	Environment clearance	10.05.2019	09.05.2026
3.	Occupation certificate date	N/A	

4.	Completion certificate date	NO
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B. Fact of the complaint

4. The complainant is an allottee of residential plot no. D-223 (initial allotted plot no. D-228) admeasuring approximately 300 sq. yards in Ramprastha City, situated in Sectors 92,93 and 95, revenue estates of village Wazirpur and Mewka, Gurugram.
5. The complainant has submitted that the respondent no. 1 had advertised themselves as a very ethical and promising business group that lives onto its commitments in delivering its real estate projects as per promised quality standards and agreed timelines; that the respondents while launching and advertising any new project always commits and promises to the targeted consumer that their space will be completed and delivered within the time frame agreed initially in the agreement while selling the developed residential plots to them. The respondents also assured to the consumers including the complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for completion of the real estate project sold by them to the consumers in general.

6. The complainant has submitted that the respondents therefore used this tool, which is directly connected to emotions of gullible consumers including the complainant, in its marketing plan and always represented and warranted to the consumers that the developed plots in the Ramprastha City will be delivered within the agreed timelines.
7. The complainant has further submitted that somewhere in the year of 2007, the respondent no. 1 through its marketing and advertisement via various mediums & means approached the complainant and represented that respondent no.1 is inviting applications for the allotment of residential plot(s) in the project Ramprastha City and offered to sell plot in the proposed project. The respondents had also shown the brochures and advertisement material of the said project to the complainant and assured that the allotment letter and plots buyer's agreement for the said project would be issued to the complainant upon payment of booking amount in terms of the payment plan. Accordingly, the complainant after going through the detailed brochure of the said project and upon relying on the representations and warranties of the respondents and the brand value associated with the respondent as a part of Ramprastha Group, booked a

residential plot of 300 sq. yard (approx.) in the project being developed by the respondents for a total consideration of Rs.31,20,000/- towards booking amount in following manner during different times in 2007.

8. The complainant has submitted that the respondent no. 1 also issued welcome letter dated 18.12.2013 congratulating the complainant for purchase a residential plot no. D-223 in Ramprastha City and assured to provide the complainant a serene surrounding and comfortable and living alongside green leisure valley and also issued allotment letter to complainant regarding allotment of flat no. D-223.
9. The complainant has further submitted that the date of booking and till today, the respondents had raised various demands for the payments from the complainant towards the sale consideration of said residential plot no. D-223 and the complainant have duly paid and satisfied all those demands as per the payments schedule and plot buyer's agreement without any default or delay on their parts and have also fulfilled otherwise also their part of obligations as agreed in the plot buyer's agreement. The complainant was and has always been ready and willing to fulfill their part of agreement, if any pending. He had paid more than 90% of the

total sale consideration to respondents for the said residential plot as demanded as on day.

10. That the respondents have committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said residential plot and regarding obtaining the required approvals from statutory authorities, which amounts to unfair trade practice, which is immoral as well as illegal. The respondents have also criminally misappropriated the money paid by the complainant as sale consideration of said residential plot by not delivering the plot within agreed timelines. The respondents have also acted fraudulently and arbitrarily by inducing the complainant to buy said residential plot basis its false and frivolous promises and representations about the obtaining statutory approvals the delivery timelines aforesaid project. The complainant further submitted that the respondents have acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the developed plots within the timelines agreed in the plot buyer's agreement.

C. Relief sought by the complainant:

11. The complainant has sought following relief(s)

- I. To direct the respondents to pay the interest at the rate of 18% P.A. on the amount of Rs.47,73,000/- 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.
 - II. To directing the respondents to handover the possession of residential plot no. D-223 admeasuring 300 sq. yards situated in Sectors 92,93 and 95, revenue estates of village Wazirpur and Mewka, Gurugram.
12. The respondents have filed reply on 12.11.2020. On the date of hearing, the Authority explained to the respondents/promoters 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 respondents

13. The respondents have filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondents have contested the complaint on the following grounds.

- i. The complaint filed by the complainant 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 as prescribed under sections 12, 14, 18 and section 19 of the Act lies with the adjudicating officer under sections 31 and 71 of the Act 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 complainant has filed the present complaint under rule 28 of the Rules and is seeking the relief of possession, interest and compensation u/s 18 of the said Act. Therefore, even though the project of the respondents i.e., Ramprastha City, at Sectors-92,93&95, Gurugram is covered under the definition of "ongoing projects" and registered with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the 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 complainant has 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. It is pertinent to mention here that as the present complaint is not in the amended 'Form CRA', therefore the present complaint is required to be rejected.

- iv. That the POA, alleged to have been executed in USA, on the basis of which the present complaint has been filed, is neither attested by the consulate General of India/High Commission of India in USA nor it is franked/stamped by the Collector of stamps/Deputy Commissioner, Gurugram and therefore it is not a valid POA and the present complaint, having being filed without any authorization, is liable to be rejected on this ground alone.
- v. That the complaint is neither signed nor supported by any proper affidavit with a proper verification. In the absence of a signed complaint with a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.
- vi. 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 complainant is investor and not consumers and nowhere in the present complaint has the complainant pleaded as to how the complainant is consumers as defined in the Consumer Protection Act, 1986 qua the respondents. The complainant, who is owner and resident of 109, Munirka Vihar, New Delhi- 110067 (address mentioned in the plot buyer's agreement and in the present complaint) and also of 2435, West Grace Street, Chicago, Illinois, 60618, USA (address mentioned in the POA dated 21.02.2020, annexed at page 21 of the complaint) is investor, who never had any intention to buy the plot for this own personal use and has now filed the present complaint on false and frivolous grounds.

- vii. Despite several adversities, the respondent no.1 has continued with the development of the said project and is in the process of completing the development of the project and should be able to apply the occupation/part completion certificate by 31.12.2024 (as mentioned at the time of registration of the project with RERA), or within such extended time, as may be extended by the authority, as the case may be. However, as the complainant is only a speculative investor and not interested in taking over the possession of the said plot

and because of slump in the real estate market, the complainant has filed the present complaint on false and frivolous grounds. It is apparent that the complainant is a mere short term and speculative investor who had the motive and intention to make quick profit from sale of the said plot through the process of allotment. Having failed to resell the said plot due to general recession, the complainant has now developed an intention to raise false and frivolous issues to engage the respondents in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainant has origin and motive in sluggish real estate market.

- viii. 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 complainant. 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 complainant and the respondents. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the plot buyer's agreement dated 28.12.2013, 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, no relief can be granted to the complainant.

ix. The respondents have submitted that the proposed estimated time of handing over the possession of the said plot was 30+6 months i.e. 36 months from the date of execution of plot buyer's agreement dated 28.12.2013 which comes out to be 28.12.2016 and not 30 months from the date of the agreement. It is further submitted that the said proposed time period of 36 months is applicable only subject to *force majeure* and the complainant having plot buyer's agreement, including but not limited to the payment of installments. This was also provided in clause 11 of the plot buyer's agreement.

x. 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)(I)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(I)(C) that it would complete the project by 31.12.2024 (as mentioned at the time of registration of the project with RERA) 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 complainant in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.

- xi. The projects in respect of which the respondents have 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

14. 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

15. 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

16. The respondents have 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 complainant has 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.*
17. The respondents have also filed an application under section 33 of the Indian Stamp Act, 1899 for impounding of the

power of attorney filed by the complainant. The authority observed that rule 28(2) of the rules provides that the authority shall follow summary procedure for the purpose of deciding any complaint. As per settled law, objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the court can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The authority will not go into these technicalities as the authority follows the summary procedure, therefore, the rules of evidence are not followed in letter and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under: -

“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent



manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”

18. From the above preamble, the intention of the legislature is quite clear that the legislation is enacted to protect the interests of the consumer in real estate sector and to provide a mechanism for a speedy dispute redressal system. It is also pertinent to note that the present Act is in addition to another law in force and not in derogation.

F. Findings on the objections raised by the respondents

F.I Objection regarding format of the compliant

19. The respondents have further raised contention that the present complaint is not maintainable as the complainant have filed the present complaint is not in amended CRA format. There is a prescribed proforma for filing complaint before the authority under section 31 of the Act in form CRA. There are 9 different headings in this form (i) particulars of the complainant- have been provided in the complaint (ii) particulars of the respondent- have been provided in the complaint (iii) is regarding jurisdiction of the authority (iv) facts of the case have been given at page no. 6 to 14 (v) relief sought that has also been given at page 16&17 of complaint

(vi) no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 3 at page 19 of complaint (viii) particulars of the fees already given on the file (ix) list of enclosures that have already been available on the file. Signatures and verification part is also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this stage, asking complainant to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent with regard to rejection of complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

F.II Objection regarding the complaint not signed and proper verified

20. The counsel for the respondents has raised contention that the complaint is neither signed nor supported by any proper affidavit with a proper verification. The authority observes

that the complaint is signed by the complainant and his counsel and affidavit is attested by the oath commissioner, Gurugram on 06.10.2020. So the allegation of the respondent is liable to be dismissed.

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

21. The counsel for the respondents has concluded 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.
22. 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.
23. 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...."

24. 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.IV Objection regarding entitlement of DPC on ground of complainant being investor

25. 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 complainants are buyer and they have paid total price of Rs.47,73,000/- 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. 000600000010557 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.V Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

26. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties *inter-se* in accordance with the buyer's agreement executed between the parties and no agreement

for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements 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."

27. 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."

28. 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.47,73,000/- 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.

29. 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.”

30. 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 from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other changes due and payable according to the payment plan.*
- (b)
- (c)
- (d) **Failure of Company to offer possession and payment of compensation.**

In the event the Company fails to offer of possession of the said plot, within thirty (30) months from the date of execution of this Agreement then after the expiry of grace period of 6 months from the said 30(thirty) months subject to the intending Allottee(s) having made all payments as per the payment plan and subject to the terms, conditions of this Agreement and bring force majeure circumstances,”

31. 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 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.

32. **Admissibility of grace period:** The respondents have submitted that the proposed estimated time of handing over the possession of the said plot was 30+6 months i.e. 36 months from the date of execution of plot buyer agreement dated 28.12.2013 which comes out to be 28.12.2016 and not 30 months from the date of the agreement. As per clause 11(a) of the plot buyer's agreement, the promoter has proposed to hand over the possession of the plot within 30 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. The authority

observed that in the said clause, the respondent has failed to mention any expression w.r.t entitlement of grace period for calculating due date of possession, therefore, the promoter/respondent is not entitled to any grace period.

- 33. Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. 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.

- 34.** 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."

35. 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%.

36. 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;"

37. 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.

38. 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 28.12.2013, 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 28.06.2016. 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 28.06.2016. The respondents have 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., 28.06.2016 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.

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

H. Directions of the authority

40. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents are 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., 28.06.2016 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 28.06.2016 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 complainant is 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 respondents/promoters 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(z a) of the Act.
- vii. The respondents shall not charge anything from the complainant, 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 promoters are 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 promoters 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.

40. Complaint stands disposed of.

41. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.03.2021

Judgement uploaded on 12.06.2021

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