BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3503 of 2020
First date of hearing: 23.12.2020
Date of decision : 30.07.2021

1. Mrs. Dipti Agrawal
2. Mr. Anurag Agrawal
Both RR/o: - D-212, Jalvayu Vihar,
Sector- 30, Gurugram- 122007 **Complainants**

Versus

M/s Ramprashtha Promoters and
Developers Private Limited.
Regd. office: - Plot No.114,
Sector-44, Gurugram-122002. **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Aditi Mishra Advocate for the complainants
Sh. Dheeraj Kapoor Advocate for the respondent

ORDER

1. The present complaint dated 22.10.2020 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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"The Edge Tower", Sector- 37D, Gurugram.
2.	Project area	60.5112 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid till 18.02.2025
5.	Name of licensee	M/s Ramprastha Builders Private Limited and 13 others as mentioned in licence no. 33 of 2008 issued by DTPC Haryana
6.	RERA Registered/ not registered	**Registered vide no. 279 of 2017 dated 09.10.2017 (Tower No. A to G, N and O)**
7.	RERA registration valid up to	31.12.2018
8.	**Extension RERA registration**	EXT/98/2019 dated

		12.06.2019
9.	**Extension RERA registration valid upto**	31.12.2019
10.	Unit no.	1602, 16th floor, Tower C [Page 41 of complaint]
11.	Unit measuring	2035 sq. ft. [Super area]
12.	Date of execution of apartment buyer's agreement	01.09.2010 [Page 37 of complaint]
13.	Date of allotment letter	31.08.2010 [Page 33 of complaint]
14.	Payment plan	Construction linked payment plan. [Page 66 of complaint]
15.	Total consideration	Rs.63,62,786/- [as per schedule of payment page 66 of complaint]
16.	Total amount paid by the complainants	Rs.54,66,617/- [as per receipt information page 14 to 32 of complaint]
17.	Due date of delivery of possession as per clause 15(a) of the apartment buyer agreement: 31.08.2012 plus 120 days grace period for applying and obtaining occupation certificate in group housing colony. [Page 51 of complaint]	31.08.2012 [Note: - 120 days grace period is not allowed]
18.	Delay in handing over possession till date of this order i.e., 30.07.2021	8 years 10 months and 30 days

B. Facts of the complaint

3. The complainants have submitted that in the month of July 2010, respondent approached them regarding purchase of a residential flat and visited the above said premises for the purpose of purchase of a flat. After that they reached the above said project site, representative of the respondent company approached the complainants to visit the entire complex and exhibited the layout plan of the entire project to finalize the flat. Thereafter, the complainants were ready to purchase one flat having address at flat no. C-1602, tower-C, "The Edge Tower" Ramprastha City Sector- 37D Gurugram Haryana- 122002, and for the same, they issued a cheque no. 785226 dated 27.07.2010 in favour of respondent company for an amount of Rs.2,00,000/- drawn on ICICI Bank.

4. It is further submitted that on 31.08.2010, the respondent company issued an allotment letter of flat no. C-1602, in the project to the complainants and subsequently, an apartment buyer agreement dated 01.09.2010 was entered between both the parties. In terms of such agreement, the complainants over a period of time commencing from July 2010 to November 2012 and made payment of a total sum of Rs.54,66,617/- to the respondent company.

5. The complainants submitted that the respondent company had undertaken to hand over possession of the flat to them by

August 2012 with a further grace period of 4 months i.e. December 2012for applying and obtaining the occupation certificate in respect of group housing complex. Hence, the complainants ought to have been handed over possession of the flat by December 2012.

6. Thereafter, respondent company sent emails to the complainants on 03.11.2015 and 28.02.2017 extending the timeline for completion of construction of the flat to December and September 2017. Even after the above assurances, the respondent failed to deliver the possession of the flat to the complainants after a total of 7 years, intimated the complainants by an email dated 20.06.2019 and 14.08.2019 that Tower- C, in which the flat is situated, is still being finished.

7. The complainants submitted that the cause of action arose for the present complaint in or around in July 2010, when the complainants booked the flat. The cause of action further arose on numerous occasions during 2011 and 2012 when the complainants paid the instalments. The cause of action continues to subsist as the respondent has delayed the possession of the flat to the complainants.

C. Relief sought by the complainants:

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

(i) Direct the respondent to pay interest at the rate of 18% p.a. for every month of delay from the due date of possession i.e., 31.12.2012 till the actual handing over of the possession of the subject apartment to the complainants.

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 contested the complaint on the following grounds.

i. That the present complaint is not maintainable in its present form and is strictly liable to be dismissed on the grounds presented hereunder by the respondents. That the Haryana Real Estate Regulatory Authority has no jurisdiction to entertain the present complaint. The respondent has also filed an application questioning the jurisdiction of the authority based on several provisions of the relevant statutes. It is submitted that this reply is without prejudice to the rights and contentions of the respondent contained in the said application.

ii. That the present complaint has been filed by the complainants before authority claiming for possession

against the investments made by them in one of the apartment of the project "Ramprastha City" of the respondent. In this behalf, it is submitted that the present authority is precluded from entertaining the present complaint as the same falls within the exclusive jurisdiction of the adjudicating officer under Rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017, which maybe hereinafter be referred as the said Rules read with Section 31 and 71 of the Real Estate (Regulation and Development) Act, 2016(hereinafter referred to as the Act).

iii. That the complaints pertaining to refund, possession, compensation and interest under Section 12, 14, 28 and 19 of the Real Estate (Regulation and Development) Act, 2016 are necessitated to be brought before the adjudicating officer under Rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with Section 31 and 71 of the said Act. Therefore the complaint ought to be filed before the adjudicating officer under rule 29 of the said rules and not before the authority under rule 28 of the said rules.

iv. That the present project falls within the definition of "ongoing projects" and has been registered with the

authority constituted under the said Act, the complaint, purported to be filed against the said project ought 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 does not possess jurisdiction to entertain the present complaint and on this ground alone, the present complaint ought to be dismissed at its root level.

v. That further without prejudice to the above, the proviso to section 71 further substantiates the above contention which clearly states that even in a case where a complaint is withdrawn from a consumer Forum/Commission/NCDRC for the purpose of filing an application under the said Act and said rules, the application, if any, can only be filed adjudicating officer and not before the authority.

vi. That the complainants have now filed a complaint in terms of the Haryana Real Estate (Regulation & Development) Amendment Rules, 2019 under the Amended Rule 28 in the Amended 'Form CRA' and are seeking the relief of possession, interest, and compensation under Section 18 of the Act. That it is most respectfully submitted in this behalf that the power of the Appropriate Government to make Rules under

Section 84 of the said Act is only for the purpose of carrying out the provisions of the said Act and not to dilute, nullify or supersede any provision of the said Act.

vii. That the power to adjudicate the complaints pertaining to refund, possession, compensation and interest for a grievance under Section 12,14,18 and 19 are vested with the adjudicating officer under section 71 read with section 31 of the said Act and not under the said rules and neither the said rules or any amendment thereof can dilute, nullify or supersede the powers of the adjudicating officer vested specifically under the said Act and therefore, the authority has no jurisdiction in any manner to adjudicate upon the present complaint.

viii. That the complainants are not genuine buyers of the apartment but are merely speculative investors who have purchased the present property in question with sheer commercial motives. That the RERA has to be read in consonance with Consumer Protection Act. The combined reading of RERA, 2016 and the Consumer Protection Act does not establish the present complainant as a 'Consumer' within the meaning of the Consumer Protection Act. Further, that even the complainants have failed to adduce any kind of

documentary proof to establish the fact that they are 'consumers' and hence, genuine buyers of the apartment. This clearly shows that the complainant had sheer commercial motives.

ix. That the statement of objects and reasons as well as the preamble of the said Act categorically specify the objective behind enacting the said Act to be for the purpose of protecting the interests of consumers in the real estate sector. However, the present complainant cannot be termed as a consumer or genuine buyer in any manner within the meaning of Consumer Protection Act or the RERA. The complainants are only investors in the present project who have purchased the present property for the purposes of investments/commercial gain. The present complaint is a desperate attempt of the complainant to harass the respondent and to harm their reputation.

x. That since the RERA Act does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 1986 (hereinafter referred to as the CPA). That the plain reading of the definition of the term "Consumer" envisaged under the Consumer Protection

Act, makes it clear that the present complainants do not fall within the walls of the term "Consumer". That the complainants are mere investors who have invested in the project for commercial purposes. They have nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". Therefore the complainants cannot be said to be consumers of respondent within the caricature of consumer within the Consumer Protection Act, 1986. The complainants have deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf, the authority may strictly direct them to adduce any documentary evidence in support of their averments.

xi. That the complainants have booked an apartment in the project in Ramprastha City in Sector 37D, Gurugram and accordingly, an allotment letter dated 31.08.2010 was issued by the respondent against the unit no. C-1602, tower C, EDGE towers admeasuring 2035 sq. ft. for a total consideration of Rs.63,62,786/-. Thereafter, an apartment buyer agreement dated 01.09.2010 was executed between the parties.

xii. That the respondent had to bear with the losses and extra costs owing due delay of payment of installments on the part of the complainants for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainants.

xiii. The respondent further submitted that vide letter dated 19.02.2020, the respondent offered of possession to the complainants subject to the payments of outstanding dues which the complainants have clearly failed to do so. Now, therefore, the complainants no right to raise fingers at the respondent for non-delivery of possession.

xiv. That apart from the defaults on the part of the allottee, like the complainants herein, the delay in completion of project was on account of the following reasons/

circumstances that were above and beyond the control of the respondent: -

- The project faced various roadblocks and hindrances including approvals from different authorities which were beyond the control of the opposite party and which in turn lead to unforeseeable delay in the construction/completion of the project and hence handing over of the possession of the flat to the complainants.
- active implementation by the Government of alluring and promising social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), further led to sudden shortage of labour/ workforce in the real estate market as the available labour was tempted to return to their respective States due to the guaranteed employment under the said NREGA and JNNURM Schemes. The said factor further created a vacuum and shortage of labour force in the NCR region. A large numbers of real estate projects, including the present project of the respondent, was struggling hard to cope with their construction schedules, but all in vain.

- Extreme water shortage, which was completely unforeseen by any of the real estate companies, including shortage of labour. The said factor of shortage of water directly affected the construction of the project at the site. To make the conditions worse, the Hon'ble High Court of Punjab and Haryana vide Order dated 16.07.2012 restrained the usage of ground water and directed to use only treated water from available Sewerage Treatment Plants. As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurugram District, it became difficult to timely complete the construction activities as per the schedule. The availability of treated water to be used at construction site was very limited and against the total requirement of water only 10-15% of required quantity was available at construction sites. In furtherance to the directions of Hon'ble High Court of Punjab and Haryana, a letter was received bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana, informing the

respondent/builder about the complete ban on the use of underground water for construction purposes and use of only recycled water being permitted for the said purposes.

- Order of Hon'ble Supreme Court of India in the case ***Deepak Kumar etc. v. State of Haryana*** (I.A. No. 12-13 of 2011 in SLPs (C) nos. 19628-29 of 2009 with SLPs (C) No. 729-731/2011, 21833/2009, 12498-499/2010, SLP(C) CC... 16157/2011 & CC 18235/2011 dated 27 February 2012) and correspondingly, the construction progress slackened. This also caused considerable increase in cost of materials. It is noteworthy that while multiple project developers passed on such incremental costs attributable to the above reasons to the buyers, the management of the respondent assured its customers that it will not and has held fast on its promise by not passing on any of such costs to the buyers.

xv. That the respondent has made huge investments in obtaining approvals and carrying on the construction and development of 'EDGE' project and despite several adversities is in the process of completing the

construction of the project and has already obtained the OC of 8 towers out of 15 towers and should be able to apply the occupation certificate for the other towers by 31.12.2020 (as mentioned at the time of application for extension of Registration of the project with RERA) or within such extended time, as may be extended by the authority, as the case may be. The complainants persuaded the respondent to allot the said apartment in question to them with a promise to execute all documents as per its format and to make all due payments. The respondent continued with the development and construction of the said apartments and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus, the respondent has suffered huge financial losses on account of breach of contract by the complainants.

xvi. That even in such unpredicted eventualities and adversities in the real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the

property at the earliest possible to the utmost satisfaction of the buyers/allottees. That even in such harsh market conditions, the respondent has been continuing with the construction of the project and sooner will be able to complete the construction of the project.

xvii. 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

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 submission made by the parties.

E. Jurisdiction of the authority

The respondent has raised a preliminary submission/ objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

respondent 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 complainants have stated that they are reserving the right for compensation and at present 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 respondent

F.I Objection regarding format of the compliant

14. The respondent has raised contention that the present complaint is not maintainable as the complainants have filed the present complaint before the adjudicating officer and the same is not in amended CRA format. The reply is patently wrong as the complaint has been addressed to the authority

and not to the adjudicating officer. The authority has no hesitation in saying that the respondent is trying to mislead the authority by saying that the said complaint was to be filed before adjudicating officer. 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 that has been also mentioned in para 13 of the complaint (iv) facts of the case have been given at page no. 5 to 8 (v)relief sought that has also been given at page 10 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 14 at page 8 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 complainants 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 principles of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent w.r.t 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 entitlement of DPC on ground of complainants being investor

15. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that an aggrieved person can file a complaint against the promoter if it contravenes or

violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and they have paid total price of Rs.54,66,617/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

In view of above-mentioned definition of an "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam***

Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants

Relief sought by the complainants: The respondent be directed to pay interest at the rate of 18% p.a. for every month of delay from the due date of possession i.e., 31.12.2012 till the actual handing over of the possession of the subject apartment to the complainants.

16. In the present complaint, the complainants intend to continue with the project and are 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."*

17. Clause 15(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"**15. POSSESSION**

(a) **Time of handing over the possession**

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31/08/2012 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

18. The authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and

documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the 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.

20. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2012 and further provided in agreement that it shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the

promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage. The same view has been upheld by the hon'ble Haryana Real Estate Appellate Tribunal in appeal nos. 52 & 64 of 2018 case titled as ***Emaar MGF Land Ltd. VS Simmi Sikka*** case and observed as under: -

> *68. As per the above provisions in the Buyer's Agreement, the possession of Retail Spaces was proposed to be handed over to the allottees within 30 months of the execution of the agreement. Clause 16(a)(ii) of the agreement further provides that there was a grace period of 120 days over and above the aforesaid period for applying and obtaining the necessary approvals in regard to the commercial projects. The Buyer's Agreement has been executed on 09.05.2014. The period of 30 months expired on 09.11.2016. But there is no material on record that during this period, the promoter had applied to any authority for obtaining the necessary approvals with respect to this project. The promoter had moved the application for issuance of occupancy certificate only on 22.05.2017 when the period of 30 months had already expired. So, the promoter cannot claim the benefit of grace period of 120 days. Consequently, the learned Authority has rightly determined the due date of possession.*

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.*

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. 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 homer 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."

23. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 30.07.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

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

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—
(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall

be from the date the allottee defaults in payment to the promoter till the date it is paid;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the agreement executed between the parties on 01.09.2010, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.08.2012. 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 31.08.2012. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to

section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 31.08.2012 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.

27. The allottees requested for fresh statement of account of the unit based on the above determinations of the authority and the request is allowed. The respondent/builder is directed to supply the same to the allottee within 30 days.

H. Directions of the authority

28. 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., 31.08.2012 till the date of handing over possession.

ii. The promoter may credit delay possession charges in the ledger account or statement of the unit of the allottees. 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 allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.

iv. The arrears of such interest accrued from 31.08.2012 till the date of order by the authority shall be paid by the promoter to the allottees 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 is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is debarred from claiming holding charges from the complainants/allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

viii. The promoter is directed to furnish to the allottees the 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 the 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 the allottee may approach the authority by filing separate application.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.07.2021

Judgement uploaded on 04.09.2021