

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

**Complaint no. : 1164 of 2020**  
**First date of hearing: 27.03.2020**  
**Date of decision : 30.07.2021**

1. Mr. Rohit Mitra  
2. Mr. Ronita Mitra  
3. Mr. Ashish Kumar Bose  
All R/o: - K-2131, 3<sup>rd</sup> floor, Chittaranjan Park,  
Kalkaji, South Delhi- 110019

**Complainants**

**Versus**

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

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Sh. Anuj Malhotra  
Sh. Rajiv K. Virmani  
Sh. Dheeraj Kapoor

Advocates for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 12.03.2020 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 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 18.02.2020
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	<b>Registered vide no. 279 of 2017 dated 09.10.2017 (Tower No. A to G, N and O)</b>

7.	RERA registration valid up to	31.12.2018
8.	<b>Extension RERA registration</b>	EXT/98/2019 dated 12.06.2019
9.	<b>Extension RERA registration valid upto</b>	31.12.2019
10.	Unit no.	803, 8 <sup>th</sup> floor, Tower N [Page no. 47 of complaint]
11.	Unit measuring	1675 sq. ft. [Super area]
12.	Date of execution of apartment buyer's agreement	23.03.2010 [Page no. 43 of complaint]
13.	Payment plan	Construction linked payment plan. [as alleged by the complainant page no. 7 of complaint]
14.	Total consideration	Rs.51,40,544/- [as per account statement page no. 72 of complaint]
15.	Total amount paid by the complainants	Rs.46,72,648/- [as per account statement page no. 72 of complaint]
16.	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 58 of complaint]	31.08.2012  [Note: - 120 days grace period is not allowed]
17.	Details of occupation certificate, if any	Date of OC granted, if any, by the competent Authority: Dated

		13.02.2020 Area/Tower for which OC obtained- N [page no. 76 to 78 of complaint]
18.	Delay in handing over possession till date of order i.e., 30.07.2021	8 years 10 months and 30 days

**B. Facts of the complaint**

3. The complainants have submitted they have respected citizen of India and respondent company through their representative had approached the complainants and represented that the respondent company residential project namely "The Edge Towers" situated at Ramprastha City, Sector-37D, Gurugram, Haryana will effectively serve the purpose of complainants as it has best of the amenities.
4. That they have obtained license from the Director General, Town & Country Planning, Haryana (DGTCP) for development of the project land into group housing complex comprising of multi-storied residential apartments in accordance with law.
5. That based on aforementioned representation and enquiries made, they have submitted application for allotment of unit no. N-803 proposed to be built on 8<sup>th</sup> Floor of block-N in the

impugned project. The said application form was submitted along with the earnest money to it. The complainants had opted for construction linked plan.

6. That pursuant to the booking, the respondent company issued application form wherein the total consideration for the said unit no. N-0803 admeasuring 1675 sq. feet along with one parking in Edge Tower project located at Ramprastha City, Sector-37D, was fixed as Rs. 48,31,125/-. The complainants opted for new payment plan. Thereafter both the parties entered into apartment buyer's agreement dated 23.03.2010 for the sale of said unit number no. N-0803 admeasuring 1675 sq. ft. along with one covered parking in Edge tower project located at Ramprastha City, sector-37D, Gurugram.
7. That the respondent company agreed to sell/convey/transfer the impugned unit N-0803, with the right to exclusive use of parking space for an amount of Rs.48,31,125/- which includes basic sale price, car parking charges, external development charges and infrastructure development charges, preferential location charges plus applicable taxes. They have already paid a sum of Rs.46,72,648/- towards the sale consideration in respect of the impugned unit.

8. That they have paid more than 90% of the total sale consideration wherein all the demand made by the it till date was honored by the complainants. Despite the said payments, the respondent company failed to deliver the possession in agreed timeframe for reasons best known to them and the respondent company never bothered to intimate rhymes and reasoning for the delay to the complainants. Even, the grace time period has long ago been breached by the respondent company with no clarity about the delivery of possession till date. Therefore, the respondent company has breached the sanctity of the agreement for sell i.e. ABA.
9. That a new date of completion of the impugned project as 31.12.2018 was granted to the respondent company vide aforementioned registration certificate subject to the right of the allottee to withdraw from the project in accordance with section 18 of the RERA Act, 2016. However, the respondent company has failed to honour the said date of completion of project and subsequently handing over the possession as granted by the authority since they have not applied for occupancy certificate of impugned tower till today. Therefore, the respondent company seems to be a continuous and recurring defaulter and is in the habit of making false claims

to dupe the hard-earned money of homebuyers like the complainants.

10. That the respondent company failed to handover the possession to the complainants on the agreed date or even after the elapse of the grace period of 120 days as provided under agreement. The reason for the delay in handing over the possession despite payment of more than 90% of total consideration is only best known to it as they have never bothered to intimate any reasons and reasoning for the delay to the complainants. Therefore, it has breached the sanctity of the agreement. The respondent has deliberately maintained silence and never bothered to apprise the complainants of the latest development of the project and any reasons and reason for such a gross and inordinate delay. Henceforth, it is liable to pay interest for delayed period of handing over the possession till the actual date of handing over the possession in accordance with Section 18 of the RERA Act.
11. That the respondent company informed to the complainants that the construction of the impugned project is complete and accordingly the impugned unit no. N-0803 is ready to be offered for possession. Further, it has also sent a statement of account with regard to pending dues and invoice for maintenance charges for six months. It is a matter of record

that occupation certificate has been granted to it with regard to the impugned tower.

12. That the respondent company is a continuous and recurring defaulter, and no respite is available against such a recurring either on justiciable or equitable ground. Any further extension to them will amount to travesty of justice as respondent company actions seems to take in bad faith and with ill motive to misappropriate complainants hard earned money. That there is almost 7.2 years of unexplained and inordinate delay in handing over the possession by it to the complainants and therefore it is a fit case wherein authority shall order for granting possession immediately along with the interest for unreasonable delay at the prescribed rate in view of the mandatory obligation as provided under section 18 of RERA Act, 2016 as well as on account of the acrimony of it wherein they obliterated the trust reposed on them by complainants by handing over their hard earned money always on time and in accordance with the agreement. The respondent company did not perform the required reciprocity which goes to very root of any bilateral agreement.

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



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

- i. To direct the respondent company to immediately deliver the possession of impugned unit no. N-0803 Edge Tower, Ramprastha City, Gurugram to the complainants.
- ii. To direct the respondent to pay interest at the prescribed rate (MCLR + 2%) for the delayed period of handing over the possession calculated from the date of delivery of possession till the actual date of handing over the possession of the impugned unit.
- iii. To adjust the delayed possession interest as per prayer (b) in the final demand raised by it.
- iv. Any other order or relief which this authority may deem fit proper in the facts and circumstances of the case, may kindly be passed in favour of the complainants and against the respondent company.

14. 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**

15. The respondent has filed an application for rejection of complaint on the ground of jurisdiction along with reply. The

respondent has contested the complaint on the following grounds.

- i. That 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 of the complainants. The respondent has already filed a separate application seeking rejection/dismissal of the captioned complaint of the complainant on the very ground of jurisdiction and the same is pending adjudication before the authority.
- ii. That the complaint pertaining to refund, possession, compensation, and interest for a grievance under section 12, 14, 18 and 19 of RERA Act are required to be filed before the adjudicating officer under Rule 29 of the Haryana Real Estate (Regulation and Development) Rules read with section 31 and section 71 of the RERA Act, and not before this authority under rule 28.
- iii. That the complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint and are seeking relief of possession, interest, compensation, and cost of litigation. That the complaint of such nature is required to be filed

before the adjudicating officer under Rule 29 of RERA Rules and not before this authority under rule 28 as this authority has no jurisdiction to entertain such complaint, thus, the same is liable to be rejected/ dismissed.

- iv. That in terms of the Haryana Real Estate (Regulating and Development) Amendment Rules, 2019, the complainants have filed the present complaint under the Amended Rule 28 in the Amended Form 'CRA' and is seeking reliefs of possession, interest, and compensation which is covered under section 18 of RERA Act.
- v. It is submitted that the RERA Rules and amendments thereof are enacted by the State Government, whereas, RERA Act has been enacted by the Centre vide its powers vested in it by virtue of Entries 6 and 7 in List 111 (Concurrent List) of the Seventh Schedule of the Constitution dealing with contracts and the transfer of property. Both Central government and state governments can legislate on matters under the concurrent list, and Article 254 of the Constitution specifically provides that central laws will prevail over state laws on matter in the concurrent list. Accordingly, RERA has an over-riding effect on conflicting state laws.

- vi. That vide order dated 25.11.2019, the Hon'ble High Court of Punjab & Haryana has stayed the operations of the notification dated 12.09.2019. Relevant extract of the order dated 25.11.2019 is reproduced hereinbelow for ready reference and kind perusal of this authority.
- vii. That without prejudice to the above, it is most respectfully that the power of the appropriate government to make rules u/s 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. The powers of the adjudicating officer to adjudicate the complaints pertaining to refund, possession, compensation, and interest for a grievance under section 12, 14, and 19 are vested with it under section 71 read with section 31 of the said Act and not under the said Rules and neither the said Rules nor any amendment thereof can dilute, nullify or supersede the powers of the adjudicating officer, vested with it under section 71 read with section 31 of the said Act, and hence the authority has no jurisdiction whatsoever to entertain the present complaint.
- viii. That without prejudice to the above, the above stated position is further substantiated by Section 84(2) (zc),

which clearly states that it is only the manner of inquiry under section 71 (1) for which a rule can be made by the appropriate Government and not by whom that inquiry is to be made as that is clearly provided in section 71 i.e. adjudicating office.

- ix. That, without prejudice to the above, it is stated that the statement of object and reasons as well as the preamble of the said Act clearly states that the RERA is enacted for the effective consumer protection and to protect the interest of consumers in the real estate sector and not of the speculative investors.
- x. That the complainants are the speculative investors and does not fall under the preview of the consumers and nowhere in the present complaint the complainants have taken a plea that they fall under the definition of consumer as defined under the Consumer Protection Act, 1986. The complainants have deliberately not pleaded the purpose for booking a unit in the project of the respondent as disclosing the purpose to be an investment would result into dismissal of the complaint. That the complainants own more than one property and therefore are speculative investors, who never had any intention to buy the said unit in the project of them for

their personal use and have now filed the present complaint on false and frivolous ground. It is respectfully submitted that the complaint is liable to be rejected/dismitted on the very ground that the complainants have not come to this authority with clean hands and intentions and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose and the complaints not being a 'Consumers' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986.

- xi. That the complainants have concealed that material facts from this authority that they are in default, having deliberately failed to make payments of installments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the statement of account.
- xii. That from the date of booking till the filing of present complaint under reply, the complainants had never raised any issue whatsoever and have now concocted a false story and raised frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainants clearly

indicates that the complainants are mere speculators having invested with a view to earn quick and due to slowdown in the market conditions, the complainants have filed the present complaint on false, frivolous and concocted grounds.

- xiii. That the respondent has completed the construction and have already obtained the occupation certificate for the respective tower in respect of the complainants. The respondent vide e-mail dated 19.02.2020 intimated the same to the complainants.
- xiv. That any additional one-year delay of the project increases the cost of the project by 20%. It is also submitted that the agreement between the parties is on firm pricing basis and therefore it cannot be said that respondent builder is benefited by the act of its own delay. That collective parameters led to the delay of the project and the role of the customers, and the complainant cannot be ignored.
- xv. That the respondent had started the construction of the above said project "The Edge" immediately after the approval of the building plan i.e. 13.08.2009 with the intention to complete the project within the stipulated time, but due to the situations beyond the control of the

respondent, the construction of the project could not be completed upto 31.08.2012.

- That the respondent in order to complete the construction of the Project on time engaged the services of Supreme Infrastructure India Ltd, which is a well renowned infrastructure company. However, Supreme Infrastructure India Ltd caused considerable delay while doing construction and lastly left the project in middle/leaving Respondent to go nowhere but to search and arrange for new contractor. The respondent tried to make Supreme Infrastructure India Ltd. stick to the project and complete the project but to no avail.
- That the *Punjab and Haryana High Court on 31.07.2012 in CWP No. 20032 of 2008 titled as Sunil Singh vs. MOEF & others* had directed that ground water shall not be used for the construction purposes and further ordered to stop the construction immediately till the time company produce a confirmation from Administrator, HUDA, Gurgaon to the effect that company is no more using ground water. Because of this order, the Deputy



Commissioner Gurgaon wrote a letter dated 01.9.2012 to the answering respondent and directed that the construction be stopped immediately.

- That further due to the heavy shortage of supply of construction material i.e. River Sand and Bricks etc through out of Haryana, due to the order of ***Hon'ble Supreme Court of India in the case titled as Deepak Kumar Vs. Haryana dated 27.02.2012***, construction work was stopped at site for considerable long time.
- Apart from that, shortage of labour is biggest challenge for any builder now-a-days. Commonwealth games organized in October 2010 resulted in extreme shortage of labour in the NCR region. Further, due to government liberal approach and announcement of policies favoring labors namely MANREGA also resulted acute shortage of labour at site which actually does not stop the/construction but slows down resulting to delay in completion of construction. Furthermore, emerging of various builders at around Delhi NCR gives opportunities to the labour and resulting in labour migration and shortage.

xvi. 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

16. 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 application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The

authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

17. 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**

18. 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 do 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 complainant has 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 entitlement of DPC on ground of complainants being investor**

19. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of

enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and they have paid total price of Rs.49,08,488/- 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 "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 is directed to immediately delivery the possession of the unit along with prescribed rate of interest.

20. 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.”*

21. 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.”*

22. The authority has gone through the possession clause of the agreement and observed 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.
23. 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 allottee 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.

24. **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 promoter 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 wrongs. 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.*

**25. 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.*

26. 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."*

27. 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%.
28. 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;”*

29. 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 the complainants in case of delayed possession charges.

30. 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. It is evident from a perusal of dated 19.02.2020 that the respondent sent an E-mail to the complainants with regard to receipt of occupation certificate dated 13.02.2020 for towers no. N, P, & H of the project known as Edge Tower. However, there is nothing on the record to show after receipt of occupation certificate by

the respondent/builder, any intimation with regard to offer of possession of the allotted unit was made to show the complainant. So, it is observed that the intimation regarding receipt of occupation certificate is not the offer of possession unless, formally the possession of the allotted unit is offered to the allottee. By virtue of clause 15(a) of the agreement executed between the parties on 23.03.2010, 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.

31. 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**

32. 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 account of the unit of the allottees. If the amount outstanding against the allottees 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 10<sup>th</sup> 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 allottees 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 complainant which is not the part of the buyer's agreement. The respondent is debarred from claiming holding charges from the complainant/allottee 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 statement of account within one month of issue of this order. If there is any objection by the allottees on statement of account, the same be filed with promoter after fifteen days thereafter. In case the grievance of the allottees relating to statement of account is not settled by the promoter within 15 days thereafter, then the allottees may approach the authority by filing separate application.

33. Complaint stands disposed of.

34. 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 14.09.2021