

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

**Complaint no. : 588 of 2020**  
**First date of hearing: 20.02.2020**  
**Date of decision : 30.07.2021**

1. Mr. Surendra Kumar Gupta
  2. Mrs. Krishna Gupta
- R/o: - E-132, 1<sup>st</sup> floor, Jalvayu  
Vihar, Sector-21, Noida- 201301

**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. A.K Ahuja  
Sh. Dheeraj Kapoor

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 03.02.2020 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	"Ramprastha City" Sector-92, 93 and 95, Gurugram.
2.	Project area	128.594 acres
3.	Nature of the project	Residential colony
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010 valid till 08.06.2016
5.	Name of licensee	Ramprastha Estates Private Limited and 25 others
6.	RERA registered/not registered	<b>Registered vide no. 13 of 2020 dated 05.06.2020</b>
7.	RERA registration valid upto	<b>31.12.2024</b>
8.	Unit no.	Plot No. 151, Tower F [Page 25 of complaint]
9.	Unit measuring	250 sq. yds.
10.	Allotment letter	23.12.2013 [Page 19 of complaint]
11.	Date of execution of Plot buyer agreement	28.12.2013 [Page 24 of complaint]
12.	Payment plan	Possession linked payment plan [Page 35 of complaint]

13.	Total consideration	Rs.27,00,000/- [as per payment plan page no 35 of complainant]
14.	Total amount paid by the complainants	Rs.22,15,000/- [as per receipt information page no 12, 36, 37 of complainant]
15.	Due date of delivery of possession as per clause 11(a) of the apartment buyer agreement: 30 months from the date of execution of agreement [Page 28 of complaint]	28.06.2016
16.	Delay in handing over possession till date of this order i.e. 30.07.2021	5 years 1month and 2days

### **B. Facts of the complaint**

3. The complainants have submitted that they have allotted by the respondent a plot admeasuring 250 square yards bearing plot no.151, Block F in 'Ramprastha City', Sector 92, 93 & 95 Gurgaon. They have paid a sum of Rs.5,50,000/- against the said allotted plot vide cheque no. 463114 Dated 31.01.2006 drawn on Indian Overseas Bank. The respondent after receiving the aforesaid payment issued a tentative registration receipt on 21.03.2006 to the complainants for their future potential projects.
4. That the respondent, vide its letter dated 04.09.2012 informed the complainants regarding tentative booking of residential plot located in 'Ramprastha City', Sector- 92, 93 & 95 at Gurgaon, Haryana and requested the complainants to visit the

corporate office of the respondent with the original booking receipt.

5. That on 18.10.2012, they have entered into a draft agreement with the respondent in respect of the aforesaid plot as allotted by the respondent to the complainants. Thereafter, the respondent was issued a welcome letter and allotment letter on 23.12.2013 to the complainants in respect of plot as allotted to the complainants.
6. That the complainants thereafter on 28.12.2013 entered into a plot buyer's agreement with the respondent in respect of the aforesaid plot as allotted to the complainants by which the possession of the plot was to be offered within 30 months from the date of execution of the said agreement. It was also mentioned in the said plot buyer's agreement that in the event the respondent company fails to offer the possession of the plot within 30 months from the date of execution of the agreement then after the expiry of grace period of 6 months from the said 30 months, the respondent company shall pay compensation to the complainants at the rate of Rs.90/- per sq. yds per month on the full area of the said plot
7. That as per the agreement dated 28.12.2013, the total sale consideration of the allotted plot was of Rs.27,00,000/- against which the complainants paid further sum of Rs.8,37,500/- vide cheque No.401178 dated 19.10.2012 and another amount of Rs.3,25,000/- vide cheque no.401180

dated 19.10.2012. The respondent issued a receipt cum confirmation of payment dated 23.01.2014 to the complainants. They have made a payment of Rs.5,02,500/- to the respondent vide cheque no. 000009 dated 03.01.2014 against which the respondent issued a receipt dated 31.01.2014 to the complainants.

8. That the total consideration for the apartment as per the agreement dated 28.12.2013 was Rs.27,00,000/-. That as per the payment plan, they have made payment of an amount of Rs.22,15,000/- which amounts to almost 90% of the total consideration of the allotted plot. The payment of the said amount was to be made by the complainants as per the payment plan which was annexed with the said agreement. As per Clause 11(d) of the agreement dated 28.12.2013, the possession of the plot had to be given within 30 months of the signing of the agreement, that is, 28.06.2016, then after the expiry of grace period of 6 months from the said 30 months, the respondent company shall pay compensation to the complainants at the rate of Rs.90/- per sq. yds per month on the full area of the said plot. Therefore, the possession of the plot had to be given by 28.12.2016 including grace period of 6 months as per the plot buyer's agreement executed between both the parties.
9. That the complainants have made timely payments to the respondent and have never been in default of payment. However, despite the aforesaid facts and circumstances, the

possession of the plot has still not been provided by the respondent to the complainants and even status of the project is unclear as the developer has refused to answer the complainants' queries.

**C. Relief sought by the complainants**

10. The complainants have sought following relief(s)
  - i. To direct the Respondent to pay compensation for delay w.e.f. 27.06.2016 in terms of agreement @ Rs.90/- per sq. yds. Per month till the possession is handed over.
  - ii. Direct the respondent hand over possession at the earliest.
11. 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**

12. The respondent has 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 complainants have filed the present complaint and is seeking the relief of possession, interest, and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e. "Ramprastha City", Sector-92, 93 & 95, Gurgaon is covered under the definition of "ongoing projects" and RERA registration has already been applied and the registration certificate is still awaited with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before this authority under rule 28 as this authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

- III. That now, in terms of the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 (hereinafter referred to as the “said amendment rules”), the complainants have filed the present complaint under the amended rule-28 (but not in the amended ‘Form CRA’) and is seeking the relief of possession, interest and compensation u/s 18 of the said Act.
- IV. That 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.
- V. That statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of “Consumer” as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not consumers and nowhere in the present complaint has the complainant pleaded as to



how the complainants are consumers as defined in the Consumer Protection Act, 1986 qua the respondents. The complainant has deliberately not pleaded the purpose for which the complainant has entered into an agreement with the respondent to purchase the flat in question. The complainants who are already the owner and residents of E-132, 1<sup>st</sup> floor, Jalvaya Vihar, Sector-21, Noida (address mentioned in the booking application form and plot buyer agreement and in the present complaint) are investors, 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.

- VI. The respondent has submitted that from the date of booking till the filing of present complaint, the complainant 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 complainant clearly indicates that the complainant is mere speculators having invested with a view to earn quick and due to slowdown in the market conditions, the



complainant has filed the present complaint on false, frivolous, and concocted grounds.

VII. Despite several adversities, the respondent has continued with the development of the said project and is in the process of completing the development of the project and is in the process of completing the development of the project and subject to force majeure conditions, 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 complainants were only short term and speculative investors therefore, they were not interested in taking over the possession of the said plot. It is apparent that the complainants had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession and because of slump in the real estate market, the complainants have developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted, and frivolous litigation. The alleged grievance of the

complainants 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 complainants. 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 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 respondent *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. That the proposed estimated time of handing over the possession of the said plot i.e. 30 months + 6 months i.e. 36 months from the date of execution of plot buyer agreement which comes out to 28.12.2013, which comes to 28.12.2016 and not 30 months from the date of agreement. it is applicable to force majeure and the complainant has complied with all the terms and conditions and not being in default of any the terms and condition of the plot, including but not limited to the payments of instalments. In case of any default/delay in payment, the date of handing over possession shall be extended accordingly solely at the respondent discretion, till the payment of all outstanding amount and at the same time in case of any default the complainant will not be entitled to any compensation whatsoever, this was also provided in clause 11 of the plot buyer 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)(l)(C). Thus, conjoint reading both the provisions, as aforementioned, would show that 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)(l)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(l)(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 it.

- XI. The respondent has submitted that the respondent has developed various projects and has completed those projects. The respondent has obtained occupation certificate in majority of its project are described as under: -

<b>S. No</b>	<b>Project Name</b>	<b>No. of Apartments</b>	<b>Status</b>
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

13. 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**

14. The application 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**

15. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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 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. Finding on the objections raised by the respondent**

**F.I Objection regarding handing over possession as per declaration given under section 4(2)(1)(C) of RERA Act**

17. The counsel for the respondent has stated 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)(1)(C). Therefore, the next question of determination is whether the respondent is entitled to avail the time given to it by the authority at the time of registering the project under section 3 & 4 of the Act.
18. 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.
19. Section 4(2)(1)(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)(1)(C) of the Act and 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....”*

20. The time period for handing over the possession is committed by the builder as per the relevant clause of plot buyer 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 does not change the commitment of the promoter to hand over the possession by the due date as per the plot buyer 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. Although, 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 agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.*** and has observed as under:

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

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

21. 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 observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that 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 plot buyer agreement, it is revealed that the complainants are buyers and they have paid total price of Rs.22,15,000/- to the

promoter towards purchase of a plot in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the plot buyer's agreement executed between promoter and complainant, 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.

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

22. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the plot buyer 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."*

23. 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."*

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 complainants.**

**Relief sought by the complainants:** (a). To direct the respondent to pay compensation for delay w.e.f. 27.06.2016 in terms of agreement @ Rs.90/- per sq. yds. per month till the possession is handed over.

24. In the present complaint, the complainants intends 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."*

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

**“11. Schedule for possession**

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

26. 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 complainants of total price, stamp duty, registration charges and any other charges due and payable according to the payment plan. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the plot buyer’s agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and

drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

27. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the plot within 30 months from the date of execution of this agreement then after the expiry of grace period of 6 months from the said 30 months subject to the intending allottee having paid all payments as per the payment plan and subject to the terms and conditions of this agreement. As a matter of record, the various receipts issued by the promoter/respondent company in favour of complainant/allottee which amount are approximately 80% of the total sale consideration. According to payment plan the allottees/complainants are fulfilled all certain terms and conditions of the agreement. The respondent has failed to provide any such document which can prove that the intending allottee has not done timely payment. Hence, the promoter/respondent company fails to provide the possession of the plot within stipulated time. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.

28. **Payment of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed



and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

29. 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."*

30. 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%.

31. 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;"*



32. 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.
33. 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(a) 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 respondent has failed to handover possession of the subject plot 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 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.

34. 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**

35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest 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 promoter may credit delay possession charges in the account ledger 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 28.06.2016 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 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 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 allottee, 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 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 the allottees may approach the authority by filing separate application.

36. Complaint stands disposed of.

37. 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 07.09.2021