

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

Complaint no. : 2015 of 2021  
First date of hearing: 18.05.2021  
Date of decision : 10.09.2021

1. Mr. Rajesh Kumar
2. Smt. Kamla Devi

Both RR/o: - C-97, Upper Ground Floor, Old,  
DLF Colony, Sector-14, Gurugram  
Haryana- 122001

**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. Rajeev Kumar Khare  
Ms. R Gayatri

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 19.04.2021 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.	1601, 16 <sup>th</sup> floor, tower D [Page no. 37 of complaint]
11.	Unit measuring	2035 sq. ft.

		[Super area]
12.	Date of execution of apartment buyer's agreement	19.10.2010 [Page no. 33 of complaint]
13.	Date of allotment letter	02.03.2011 [Page no. 66 of complaint]
14.	Payment plan	Construction linked payment plan. [Page no. 62 of complaint]
15.	Total consideration	Rs.65,87,246/- [as per schedule of payment page no. 62 of complaint]
16.	Total amount paid by the complainants	Rs.57,43,391/- [as per receipt information page no. 67 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 no. 47 of complaint]	31.08.2012 [Note: - 120 days grace period is not allowed]
18.	Occupation certificate	Not obtained
19.	Date of offer of possession	Not offered
20.	Delay in handing over possession till date of this order i.e. 10.09.2021	9 years and 10 days

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- I. That the respondent, a real estate developer, offered for sale to the complainants a 3BHK(L) flat no. 1601 on 16<sup>th</sup> floor in tower D, admeasuring 2035 sq. ft. in his the then proposed Group Housing

Colony, The Edge Tower, located at Village Gadoli Kalan, Sector 37D, Tehsil & District Gurgaon, Haryana, for a total sale consideration of Rs. 65,87,246/- only on false representations.

- II. That the complainants are law abiding citizens and they were enticed into booking the said property on various false representations. The complainants booked the said property under construction linked plan and made first payment of Rs. 2,00,000/- on 14.07.2010. complainants were shown a brochure which indicated that area of flat booked by them was 1990 sq. ft. but the same appeared as 2035 sq. ft. in the agreement etc. The respondent explained that brochure was made before the layout drawings were approved and that's why the difference crept in.
- III. That the complainants paid a further sum of Rs.8,00,000/- on 30.08.2010 as demanded by respondent before execution of apartment buyer's agreement as is evident from statement of account. Thereafter the complainants were asked to enter into an apartment buyer's agreement on 19.10.2010 with the respondent. The complainants were issued allotment letter on 02.03.2011 for the said property for a sale consideration of Rs.65,87,246/-
- IV. That the complainants have performed their part of agreement by making payments against all the demand notes raised by respondent from 09.04.2011 to 16.01.2013 and paid a total sum of Rs.57,43,391/- as shown in statement of against the total sale

consideration of Rs. 65,87,246/-. That the respondent promised to handover possession of the apartment on 29.12.2012 as per apartment buyer agreement, after taking into consideration a grace period of 120 days which the respondent unilaterally assigned to himself. And the complainants were made to pay a sum of Rs. 50,977/- toward interest payment as well at exorbitant rate of 1.5% per month without giving any justification for the same.

- V. That the respondent has violated above said condition of the agreement by failing to hand over possession of the booked apartment to this day, and hence the respondent is in the teeth of section 18(1) of the Act, for delay in possession by over 8 years 3 months, when no force majeure condition has ever occurred.
- VI. That the respondent, in violation of his obligations u/s 12 of the Act, charged the complainants EDC & IDC at the rate of Rs.335/- per sq. ft. whereas the appropriate rate of EDC & IDC should have been Rs.225/- per sq. ft. or less. That the respondent overcharged Rs.2,23,850/- on account of statutory charges, Rs.25,000/- towards car parking charges.
- VII. That the respondent, in violation of his obligation's u/s 12 of the Act, asserted the area of the apartment to be 2035 sq. ft. in the allotment letter and the apartment buyer's agreement whereas the area was displayed to be 1990 sq. ft. in the prospectus.

- VIII. That the respondent, in violation of section 11(3) of the Act, never made available sanctioned plans, the stage wise time schedule of completion of the project including the provisions for civic infrastructure like water, sanitation and, electrification.
- IX. That the respondent has not uploaded on the authority website, copies of various mandatory approvals in regard of the project which the respondent had to obtain before starting construction work. This constitutes violation of sub-section 4(2)(c)(d)(h) of the Act.
- X. That the respondent did not bother to deposit 70% of amounts collected by him from homebuyers in violation of section 4(2)(l)(D) of the Act. That the respondent is reluctant to comply with the authority notice dated 20.07.2020 issued to him for rectification of non-compliance of provision of section 4(2)(l)(D) of the Act. That the reluctance of respondent to comply with section 4(2)(l)(D) of the Act, gives rise to suspicion, beyond reasonable doubt, that allottees money has been siphoned off and that the respondent cannot, nor does he intend to, handover possession of apartment in near future.
- XI. That the order dated 12.06.2019 of the authority brings out the fact that environment clearance was granted only on 21.10.2010 hence it evident that the respondent began construction, illegally, before grant of EC. Further that the license no. 33 of 2008 was

valid upto 17.02.2018 hence the respondent is not permitted to do any construction work until license is renewed.

- XII. That the delay of over 8 years and 3 months is inordinate delay and hence the respondent is liable u/s 18(1) to (i) handover possession of suit property complete in all respect immediately, (ii) pay delay penalty till the date of handover of possession and (iii) pay interest every month till the date of actual handover of possession if possession not handed over immediately.

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

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

- i. To direct the respondent company to handover possession of flat to the Complainants along with interest (@12% per annum, from the due date of possession amounting to Rs. 56,85,957/- only, till 29.03.2021) from the due date of handing over possession till the date of actual hand over of possession, if flat is ready as per the prevailing laws.
- ii. To direct the respondent to pay interest @12% per annum till the date of order of possession and Rs.57432/- every month thereafter until actual possession of flat, complete in all respect, has been handed over to the complainants.
- iii. To direct the respondent to refund excess EDC/IDC of Rs. 2,23,850/- and car parking charges towards Rs. 2,50,000/- collected from the complainants.

5. 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**

6. The respondent has contested the complaint on the following grounds.

The submissions made therein, in brief are as under:

- i. That the present complaint has been filed by the complainant before the authority claiming for possession along with compensation against the investment made by the complainant in one of the plots in the project "Ramprastha City" of the respondent. That the present authority is precluded from entertaining the present matter due to lack of cause of action and lack of jurisdiction of the authority. That further no violation or contravention of the provisions of the Act has been prima facie alleged by the complainant.
- ii. That the HRERA amendment rules, 2019 has been notified on 12.09.2019 whereby inter alia amendments were made to rule 28 and 29 of the Haryana rules. The Rule 28 deals with the provisions related to the jurisdiction of the authority.
- iii. That further the High Court of Punjab and Haryana, vide an order dated 16.10.2020 in *Experion Developers Pvt Ltd Vs State of Haryana and Ors, CWP 38144 of 2018 and batch*, has observed as



hereunder when a question was raised before the said Hon'ble High Court pertaining to the jurisdiction of the authority and the adjudicating officer with respect to the Haryana amendment rules, 2019.

- iv. That in this context, firstly, to file a complaint before the authority within rule 28, it is utmost crucial that *any violation or contravention of the provisions of the Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent* has been therefore alleged by the complainant. That in the present case, no such allegation has been made by the complainant which prima facie hints for a necessity for intervention of the authority. Therefore, the present case is liable to be dismissed before the authority for want of lack of cause of action and further, also the respondent cannot be held liable for an explanation when there is no such allegation of contravention.
- v. That, further, another aspect which needs attention herein is that when it comes to the part of compensation or compensation in the form of interest, the adjudicating officer shall be the sole authority to decide upon the question of the quantum of compensation to be granted. In this regard, the main excerpts of rule 29 of the Haryana amendment rules, 2019.
- vi. Therefore, the amendments have been upheld by the Hon'ble Punjab and Haryana High Court. That however when the same

judgment dated 16.10.2020 was referred to the Hon'ble Supreme Court in *M/s Sana Realtors Private Limited & Ors Vs Union of India*, the Hon'ble Supreme Court vide an Order dated 25.11.2020 has stayed the order dated 16.10.2020 until further orders. The hearings are being held on a day-to-day basis and the next date has 26.08.2021. It is submitted that the question of jurisdiction may kindly be deferred till the matter is finally decided by the Hon'ble Supreme Court.

- vii. That therefore in view of the stay ordered by the Hon'ble Supreme Court, in any case, these matters require an erstwhile stay keeping in view the directions of the Supreme Court. In this aspect, the jurisdiction of the authority be subject to the final verdict of the Hon'ble Supreme Court.
- viii. That the complainant has 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 is 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.

- ix. That the power to adjudicate the complaints pertaining to refund, 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.
- x. 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 Act has to be read in consonance with Consumer Protection Act. That the combined reading of the Act 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 thence, genuine buyers of the apartment. This clearly shows that the complainant had sheer commercial motives.
- xi. That the statement of objects and reasons as well as the preamble of the 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 a genuine buyer in any manner within the meaning of Consumer Protection Act or the Act. The present complainant is only an investor in the present project who has 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 the reputation of the respondent.

- xii. That since the 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. That the plain reading of the definition of the term "Consumer" envisaged under the CPA makes it clear that the present complainant does not fall within the walls of the term "Consumer". That further the complainants are mere investors who has invested in the project for commercial purposes.
- xiii. That complainants 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 respondents 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. The authority may strictly direct the complainants to adduce any documentary evidence in support of their averments.

- xiv. That complainants have booked an apartment in the project in Ramprastha City in Sector 37D, Gurgaon and accordingly, an allotment letter dated 02.03.2011 was issued by the respondent against the unit no. D-1601, tower D, Edge towers admeasuring 2035 sq. ft. for a total consideration of Rs.65,87,246/-. Thereafter, an apartment buyer agreement dated 01.09.2010 was executed between the parties.
- xv. That the entire transaction of the complainants with the respondent of purchasing a unit in the project was for a “commercial purpose” and in view of catena of judgments of the Hon’ble National Consumer Disputes Redressal Commission, the complaint before the authority is not maintainable in its present form and hence is liable to be dismissed at its very beginning.
- xvi. That it is submitted that the complainants have concealed its own inactions and defaults since the very beginning. The complainants have deliberately concealed the material fact that the complainants are at default due to non-payment of several installments within the time prescribed, which has also resulted into delay payment charges/interests.

- xvii. Further, as per its own averment the complainant has agreed that there is still an outstanding payment on complainants' part which has caused a hindrance in delivery of possession of the apartment. The complainants have themselves agreed that the complainant is at default for the payment of the abovementioned amount. Therefore, in view of this it is submitted that the complainants cannot be allowed to benefit out of its own default. The complainants are liable to pay all such amounts which have been rightfully demanded by the respondent; in absence of which, the complainants cannot rightfully be entitled to any possession of unit.
- xviii. 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.

- xix. That from the initial date of booking to the filing of the present complaint, the complainants have never raised any issues or objections. Had any valid issue been raised by complainants at an earlier date, the respondent would have, to its best, endeavored to solve such issues much earlier. However, now to the utter disappointment of them, the complainants have filed the present complaint based on fabricated story woven out of threads of malice and fallacy.
- xx. That the complainants have been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondent into agreeing with the unreasonable demands of the complainants. The reality behind filing such complaint is that the complainants have resorted to such coercive measures due to the downtrend of the real estate market and by way of the present complaint, is only intending to extract the amounts invested along with profits in the form of exaggerated interest rates.
- xxi. That this conduct of the complainants itself claims that the complainants are mere speculative investors who have invested in the property to earn quick profits and due to the falling & harsh real estate market conditions, the complainants are making a desperate attempt herein to quickly grab the possession along with high interests on the basis of concocted facts.

xxii. That the delay in delivering the possession of the apartment to the complainants herein has attributed solely because of the reasons beyond control of the respondent.

- That the delay has occurred only due to unforeseen and untacklable circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the apartment for which the respondent cannot be held accountable. However, the complainants despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondent with a wrongful intention to extract monies.
- That with respect to the present transaction/agreement that time is not of the essence when the delivering of possession of the said apartment is concerned. Clause 13(a) of the agreement which stipulates the essence of time.
- that the Supreme Court in para 18 of its judgment in ***Bangalore Development Authority v. Syndicate Bank (2007) 6 SCC 711*** has held that in a contract involving



construction, time is not the essence of the contract unless specified. The Hon'ble Supreme further reiterated the said principle in the case of *N. Srinivasa v. Kuttukaran Machine Tools Limited (2009) 5 SCC 182*, wherein the Court further observed in Para 27 of its judgment.

- The project faced various roadblocks and hindrances including approvals from different authorities which were beyond the control of the respondent 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 were 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.

- The respondent faced extreme water shortage, which was completely unforeseen by any of the real estate companies, including the respondent, in the NCR region. The respondent, who was already trying hard to cope up with the shortage of labour, as mentioned above, was now also faced with the acute shortage of water in the NCR region. 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 (hereinafter referred to as "STP"). 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, the respondent received a letter bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana,

informing the respondent 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.

- that the respondent neither had any control over the said directions/orders from the Hon'ble High Court nor had any control over the shortage of water in the NCR region, which in turn led to the delay in the completion and hence the handing over of the possession of the flat to the complainants.
- there has been a heavy shortage of supply of construction material i.e. river sand and bricks etc. through out of Haryana, pursuant to 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 27.02.2012) 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.

- That the extended date of possession has been accepted by majority of the flat buyers and is therefore binding on all and a single flat buyer cannot be allowed to dispute the extended date of possession and withdraw from the project thereby jeopardizing the project causing prejudice to large number of flat buyers. It is submitted that since the project has already stepped towards completion, it is impossible to generate funds to refund whimsical claimants like the petitioner without putting the entire project at the risk of default.
- That the respondents have 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 have already obtained the OC of 8 towers out of 15 towers and should be able to apply the Occupation Certificate for the other towers (including the apartment in question) by 31.12.2020 (as mentioned at the time of application for extension of registration of the project with the authority) 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 promise to execute all documents as per format of the respondent and to make all due payments. The respondent

continued with the development and construction of the said apartment 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.

- That even in the cyclone of adversities and the unpredicted wrath of falling real estate market conditions, the respondent have 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 have been continuing with the construction of the project and sooner will be able to complete the construction of the project.

xxiii. That the complainants are short-term speculative investor, their only intention was to make a quick profit from the resale of the land and having failed to resell the said plot due to recession and setbacks in the real estate world, have resorted to this litigation to grab profits in the form of interests. It is submitted that the complainants were never interested in the possession of the property for personal use but only had an intent to resell the

property and by this, they clearly fall within the meaning of speculative investors.

- xxiv. The complainants are not entitled to claim refund as claimed by the complainants in the complaint is clearly time barred. The complainants have themselves not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent. That it is due to lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited by them which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainants cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. The complainants had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainants are made crystal clear with the present complaint and concretizes the status of the complainants as investors who merely invested in the

present project with an intention to draw back the amount as an escalated and exaggerated amount later.

- xxv. That the complainants invested in the project only with the motive to reap the benefits of the escalated property rates at a later stage.
- xxvi. Despite several adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, it 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.
- xxvii. That the adjudicating officer is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainants/allotment offered to them. 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 both the parties. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 19.10.2013, executed much prior to coming into force of said Act

or said Rules. The adjudication of the complaint for possession, refund, 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, in view of the submissions made above, no relief can be granted to the complainants.

xxviii. That till date, the complainants kept on making payment as per the payment plan, though not within the time prescribed, which resulted in delay payment charges/interest; that from the date of booking till the filing of the present complaint, the complainants never raised any issue whatsoever, clearly reveals that the they have no issue or concern about the said apartment/agreement and terms and conditions of the said apartment buyer's agreement and are now unnecessarily raising false and frivolous issues and has filed the present complaint.

xxix. That the delay in delivering the possession of the apartment to the complainants have attributed solely because of the reasons beyond control of the respondent and the complainants' own default.

xxx. 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

7. 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**

8. 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**

9. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

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

10. 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.57,43,391/- 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 is not entitled to protection of this Act also stands rejected.

**G. Findings on the relief sought by the complainants**

**G.I To handover the possession of the flat to the complainants along with interest at the rate 12% p.a. from the due date of possession till the date of actual handing over of possession.**

11. 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. Section 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."*

12. 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."*

13. 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.
14. 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.

15. **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.
16. **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.*

17. 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.
18. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @18% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees 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 authority 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 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.

19. 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., 10.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
20. 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;”*

21. 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 complainant in case of delayed possession charges.
22. 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 19.10.2010, 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.

23. The allottees have 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**

24. 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 account ledger of the unit of the allottees. If the amount outstanding against them 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vii. 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 allottees 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.

25. Complaint stands disposed of.

26. File be consigned to registry.

**(Samir Kumar)**  
Member

**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.09.2021

Judgement uploaded on 10.11.2021

**HARERA**  
GURUGRAM