

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

Complaint no. : 2620 of 2021
First date of hearing: 10.09.2021
Date of decision : 10.09.2021

1. Mr. Chandra Shekhar Azad
2. Mrs. Archana Kumari
Both RR/o: - M-1103, Homes 121,
Sector- 121 Noida, UP- 201301

Complainants

Versus

M/s Ramprashtha Promoters and
Developers Private Limited.
Regd. office: - Plot No.114, Sector-44,
Gurugram-122002
Corporate Office at: - C-10, C Block
Market, Vasant Vihar, New Delhi- 110057

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Sh. Chandra Shekhar Azad
Ms. R. Gayatri

Complainant in person
Advocate for the respondent

ORDER

1. The present complaint dated 23.07.2021 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	Registered vide no. 279 of 2017 dated 09.10.2017 (Tower No. A to G, N and O)
7.	RERA registration valid up to	31.12.2018
8.	Extension RERA registration	EXT/98/2019 dated 12.06.2019
9.	Extension RERA registration valid upto	31.12.2019
10.	Unit no.	1106, 11 th floor, tower- G [Page no. 59 of complaint]
11.	Unit measuring	1470 sq. ft.



		[Super area]
12.	Date of execution of apartment buyer's agreement	18.09.2010 [Page no. 55 of complaint]
13.	Date of allotment letter	25.12.2010 [Page no. 30 of complaint]
14.	Payment plan	Construction linked payment plan. [Page no. 84 of complaint]
15.	Total consideration	Rs.43,90,990/- [as per schedule of payment page no. 84 of complaint]
16.	Total amount paid by the complainants	Rs.34,96,923/- [as per receipt information page no. 19 & 21 to 27 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 69 of complaint]	31.08.2012 [Note: - 120 days grace period is not allowed]
18.	Occupation certificate	Not Obtained
19.	Offer of possession	Not Offered
20.	Delay in handing over possession till date of 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 launched a project with approval of DTCP, Haryana vide memo no. 33 in February 2008 to develop a group housing project located at southern court, Ramprastha city,

sector-37D, Gurugram. (Hereinafter referred as the 'said project')

- II. That the complainants were offered a 2-BHK flat bearing no. I-1102 in the said project in 2007 with an estimated cost Rs.37,67,350 as per the agreement dated 14.12.2007. Approximately 14% payment of Rs. 5,17,213/- was made by the complainant to the respondent.
- III. That the complainants changed their mind and instead of a 2BHK unit he opted for a 3BHK and was allotted a 3 BHK unit bearing no. G-1106 with a super area of 1470 sq. ft. with estimated cost of Rs.4,90,900/- in September 2010 in the said project. Until today Rs.34,96,923/- has been paid to the respondent and Rs.4,16,304/- was to be paid to the respondent during the offer of possession, Rs.5,22,757/- was supposed to be paid by the complainant in 2013 and 2019 as per the builder account statement.
- IV. That it has been almost 11 years, if we consider the allotment date 25.12.2010 until July 2021, wherein the actual possession date was 31.08. 2012. The respondent year on year has changed multiple handover date but the fact was the respondent has diverted their funds in other projects like SKYZ, Rise, etc.
- V. That the complainants have approached the representatives of the respondent but apart from assurance no concrete action was

taken by the respondent. The respondent also did not bother to respond to the emails and calls of the respondent.

VI. That in light of the above-mentioned facts the complainants have decided to approach the hon'ble authority as the complainant has been suffering from the past 12-13 years because of the pre-EMI Interest, other additional cost, notional cost and tax loss due to delay of the possession of the unit bearing no. G-1106 in the said project.

C. Relief sought by the complainants:

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

i. 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.

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 complainants have filed by the present complaint before this authority inter alia praying for possession of a 3BHK unit bearing no. G-1106, 11th floor, admeasuring 1470 sq. ft. in the project "Edge Tower" of the respondent along with interest in favour of complainants and against the respondent.
- ii. That the present complaint has been filed by the complainants 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.
- iii. That the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 (in short, the amendment rules) 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.
- iv. 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 amendment rules, 2019.

- v. 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 complainants. 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.
- vi. 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 amendment rules, 2019.
- vii. 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.

- viii. 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.
- ix. That the complainants have now filed a complaint in terms of the Haryana Real Estate (Regulation & Development) amendment rules, 2019 under the amended rule 28 in the amended 'Form CRA' and 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.

- x. 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.
- xi. That the complainants are not "Consumers" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainants were to make investment in a futuristic project of the respondent only to reap profits at a later stage when there is increase in the value of flat at a future date which was not certain and fixed and neither there was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.
- xii. The complainants having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project of the respondent and the complainants have no intention of using the said flat for their personal residence or the residence of any of their family members and if the complainants have such intentions they

would not have invested in futuristic project. The sole purpose of the complainants was to make profit from sale of the flat at a future date and now since the real estate market is seeing downfall, the complainants have cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. That it is submitted herein that the complainants having purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said apartment and therefore, the complaint being not maintainable must be dismissed in limine.

- xiii. That the complainants have approached the respondent office in 2010 and have communicated that the complainants are interested in a project which is "not ready to move" and expressed their interest in a futuristic project. That the complainants were not interested in any of the ready to move in/near completion projects of the respondent. It is submitted that on the specific request of the complainant, the investment was accepted towards a futuristic project. Now the complainants are trying to shift the burden on the respondent as the real estate market is facing rough weather.
- xiv. That the statement of objects and reasons as well as the preamble of the said Act clearly state that the Act is enacted for effective consumer protection and to protect the interest of consumers in

the real estate sector. The Act 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 consumer and nowhere in the complaint have the complainants pleaded as to how the complainants are consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainants have deliberately not pleaded the purpose for which the complainant entered into an agreement with the respondent to purchase the apartment in question. The complainants, who is already an owner of House no. 328, Sector 27, Gurugram (address provided at the time of booking application form) are investors, who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds. It is most respectfully submitted that the adjudicating officer has no jurisdiction howsoever to entertain the complaint as the complainants have not come to the adjudicating officer with clean hands 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 complainants not being a 'consumers' within the meaning of

section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the said Act. This has been the consistent view of the Hon'ble National Consumer Disputes Redressal Commission.

- xv. That the complainants cannot be said to be genuine consumers by any standards; rather the complainants are mere investors in the futuristic project. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.
- xvi. That the complainants have not cleared its outstanding dues and is in default of a large amount excluding the delay interests out of total consideration of Rs. 43,90,990/-. Therefore, the complainant cannot rightfully claim for refund or possession since the possession has not been handed over due to complainant own default. That it is due the lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited by them which caused the present unpleasant situation. That it is due to the default of the complainants, the allotment could not have been carried out.
- xvii. Even all through these years, the complainants have never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years only hints at

the mala-fide intentions of the complainants. Apparently, the complainants have been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property.

- xviii. That the complainants invested in the project only with the motive to reap the benefits of the escalated property rates at a later stage. It is evident from the complaint that the complainants were actually waiting for the passage of several years to pounce upon the respondent and drag them in unnecessary legal proceedings. It is submitted that huge costs must be levied on the complainants for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent.
- xix. They have bear with the losses and extra costs owing due delay of payment of instalments 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 endeavoured 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 endeavours 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.

- xx. 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.
- xxi. 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.
- xxii. 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.

- xxiii. That the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainants had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of consumer courts and in further view of the fact the complainants had knowingly made an investment in a future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this Hon'ble Tribunal and hence the complaint is liable to be dismissed on this ground as well.
- xxiv. That the complainants primary prayer for handing over the possession of the apartment is entirely based on imaginary and concocted facts by the complainants and the contention that the respondent was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainants had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking in 2010 was made by the complainants towards a *future potential project* of the respondent

and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainants; hence the complaint does not hold any ground on merits as well.

xxv. That the respondent has applied for the mandatory registration of the project with the authority but however the same is still pending approval on the part of the authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the Act for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondent. This by any matter of fact be counted as a default on the part of the respondent.

xxvi. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT

line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainants while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said apartment.

- xxvii. That the complainants had approached the respondent company, it was made unequivocally clear to the complainants that a specific apartment cannot be earmarked out of large tracts of undeveloped and agricultural land; and ii) specific plot with preferred location can be demarcated only when the government releases the zoning plans applicable to the area Village Basai, Gadauli Kalan, Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainants. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural plot of the respondent.
- xxviii. That complainants are short-term speculative investors, their only intention was to make a quick profit from the resale of the land and having failed to resell the said apartment 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 most strongly 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.

xxix. The respondent has applied for the mandatory registration of the project with the authority and has successfully received registration on 09.10.2017 vide registration no. 279 of 2017 for 'EDGE' project. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act. It is submitted that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the authority for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondent. This by any matter of fact be counted as a default on the part of the respondent.

xxx. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans

has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail below. The complainants while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said apartment.

xxxii. That the delay has occurred only due to unforeseen 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 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.

xxxii. That the complainants are not entitled to claim refund as claimed by the complainants in the complaint is clearly time barred. The complainants have itself not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. 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. If at all, 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 complaint is only made with an intention to arm twist the respondent. The entire intention of the complainants is made crystal clear with the complaint and concretes the status of the complainants as an investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

xxxiii. It is evident from the complaint that the complainants were actually waiting for the passage of several years to pounce upon the respondent and drag them in unnecessary legal proceedings. It is submitted that huge costs must be levied on the complainant for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent. It is pertinent to mention that from the date of booking till the filing of the present complaint, the complainants have never ever raised any issue whatsoever and have now concocted a false story and raised false and 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 profit and due to slowdown in the market conditions, the complainants have filed the present complaint on false, frivolous, and concocted grounds.

xxxiv. 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 him. 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 complainants and the respondent. Rather,

the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the apartment buyer agreement dated 18.09.2010, 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.

xxxv. The fact that (a) 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; and (b) that from the date of booking till the filing of the present complaint, the complainants never raised any issue whatsoever, clearly reveals that the complainants had 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.

xxxvi. 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 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

8. 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

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

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

9. 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.34,96,923/- 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.

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

10. 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 apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/ situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld

in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd.**

Vs. UOI and others. (W.P 2737 of 2017) which provides as under:

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

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

11. 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: The respondent is directed to immediately delivery the possession of the unit along with prescribed rate of interest.

12. 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.”

13. 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.”

14. 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.
15. 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.

16. **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.
17. **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 allottees 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.

18. 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.
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(z a) of the Act provides that the rate of interest chargeable from the allottees 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 complainants 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 18.09.2010, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.08.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.08.2012. The respondent has failed to handover possession of the subject apartment till date of

this order. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 31.08.2012 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a.as per proviso to section 18(1) of the Act read with rule 15 of the rules.

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 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 dues against the allottees.
- iv. The arrears of such interest accrued from 31.08.2012 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The rate of interest chargeable from the 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(z) of the Act.

- vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- 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.

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