

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

Complaint no. : 2678 of 2021
First date of hearing: 10.09.2021
Date of decision : 10.09.2021

Sh. Upinder Kumar
R/o: - House no. 2484, First Floor, C-Block,
Near Gold Souk Mall, Sushant Lok, Phase-1,
Gurugram- 122009

Complainant

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. Abhay Jain & Rishabh Jain
Ms. R. Gayatri

Advocates for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 19.07.2021 has been filed by the complainant/allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Ramprastha City" Sector-92, 93 and 95, Gurugram.
2.	Project area	128.594 acres
3.	Nature of the project	Residential colony
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010 valid till 08.06.2016
5.	Name of licensee	Ramprastha Estates Private Limited and 25 others
6.	RERA registered/not registered	Registered vide no. 13 of 2020 dated 05.06.2020
7.	Unit no.	Plot No. F-71, Block- F [Page 48 of complaint]
8.	Unit measuring	300 sq. yds.
9.	Date of allotment letter	21.12.2013 [Page 38 of complaint]
10.	Date of execution of plot buyer agreement	24.12.2013 [Page 45 of complaint]
11.	Payment plan	Possession linked payment plan. [Page 60 of complaint]
12.	Total consideration	Rs.49,65,000/- [as per payment plan page 60 of complaint]
13.	Total amount paid by the	Rs.43,83,000/-

	complainant	[As per receipt information page 29, 36 & 37 of complaint]
14.	Due date of delivery of possession as per clause 11(a) of the plot buyer agreement: 30 months from the date of execution of agreement [Page 51 of complaint]	24.06.2016
15.	Delay in handing over possession till date of this order i.e. 10.09.2021	5 Year 2 month and 17 days

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- I. That the complainant is a peace loving and law-abiding citizen of India, who nurtured hitherto an un-realized dream of having his own home on a plot in upcoming society with all facilities and standards, situated around serene and peaceful environment. The complainant always leads his life with full of honesty, simplicity and truthfulness and epitomizes utmost kindness and humanism.
- II. That the grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by them in regard to the plot no. F-071, measuring 300 square yards in Sector 92, 93 & 95, Ramprastha City, Gurugram, Haryana, purchased by the complainant paying his hard-earned money.

- III. That based on the licence, and even prior to the grant of the licence, the respondent collected a huge amount from gullible and naïve buyers including the complainant from 2006 to 2013 and promised the complainant to hand over the possession of the plot latest by 24.06.2016 as per the plot buyer's agreement. The complainant, in total, paid a sum of Rs.43,83,000/- way back till 09.03.2013, i.e. 100 % payable amount, as and when demanded by the respondent. Still the respondent failed to timely handover the possession of the plot to the complainant till date, even after a delay of more than five years.
- IV. That the respondent published very attractive brochure, highlighting the residential plotted colony called 'Ramprastha City' at Sector 92, 93 & 95, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy the plots in the project including the complainant. There are fraudulent representations, incorrect and false statements in the brochure. The complainant invites attention of the authority, Gurugram to Section 12 of the Act, 2016. The project was launched in 2006 with the promise to deliver the possession on time and huge funds were collected over the period by them.

- V. That the complainant was approached by the sale representatives of respondent, who made tall claims about the project '**Ramprastha City**' as the world class project. The complainant was invited to the sales office and was lavishly entertained, and promises were made to him that the possession of his plot would be handed over in time including that of parking, horticulture, club and other common areas. The complainant was impressed by their oral statements and representations and ultimately lured to pay Rs.15,00,000/- as booking amount to the respondent, via receipt no. 209 dated 13.06.2006 for registration of a 300 square yards plot.
- VI. That, a plot buyer agreement was executed between both the parties on 24.12.2013 wherein plot no. F-75 measuring 300 square yards was allotted to the complainant.
- VII. That the respondent violated section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the plot before the execution of the plot buyer's agreement. The total cost of the Plot is Rs.49,65,000/- (including EDC, IDC, PLC, etc. while the respondent had collected a total sum of Rs.43,83,000/- around 88% of the total cost of the plot till 09.03.2013.
- VIII. That, the date of offer for possession as per clause 11(a) of the plot buyer's agreement comes on 24.06.2016, calculated 30 months from the date of signing of the agreement.

- IX. That the complainant approached them and pleaded for delivery of possession of his plot as per the plot buyer's agreement on various occasions. The respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of his plot, thereby the respondent violated section 19 of the Act, 2016.
- X. The complainant has lost confidence and in fact has got no trust left in the respondent, as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the Complainant besides being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the Plot in time and then remaining non-responsive to the requisitions of the Complainant.
- XI. The complainant does not intend to withdraw from the project. As per the obligations on the respondent/promoter under section 18 of the Act, 2016 read with rules 15 and 16 of the rules, 2017, the promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. The respondent has neglected its part of the obligations by failing to offer a legitimate and rightful possession of the plot in time.
- XII. That the respondent/seller/builder/promoter is habitual of making false promises and has deceptive behaviour. The

respondent has earned enough monies by duping the innocent complainant and other such buyers through unfair trade practices and deficiencies in services and has caused the complainant enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s)

- I. To direct the respondent to complete the development of the plot along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.
- II. To direct the respondent to handover the legal and rightful possession of the plot to the complainant, after receiving the completion certificate (CC) and other required approvals from the competent authorities.
- III. Direct the respondent to pay interest for every month of delay in handing over the possession of the plot since 24 June 2016 to the complainant, on the amount taken from the complainant towards sale consideration and other charges for the aforesaid plot, with interest at the prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the plot to the complainant.
- IV. Direct the respondent to not charge anything beyond the charges stipulated in the plot buyer's agreement.

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.

- I. That the present complaint is not maintainable in its authority and the complaint is liable to be dismissed on the grounds presented hereunder by the respondent. That the Haryana Real Estate Regulatory Authority has no jurisdiction to entertain the present complaint. The respondent has also filed an application questioning the jurisdiction of the authority based on several provisions of the relevant statutes. It is submitted therefore that this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
- II. That the complainant has approached the respondent in the year 2006 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sectors 92, 93 and 95, Gurugram. The complainant fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere futuristic project have decided to make an investment in the said project for speculative gains. Thereafter, in 2006, the complainant has paid a booking amount of Rs.15,00,000/- towards booking of the said project pursuant to which a receipt bearing no. 209 dated 13.06.2006 was issued to the complainant.

Thereafter, in the year 2013, the respondent has issued a welcome letter and provisional allotment letter dated 21.12.2013 vide which it was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved. Further the plot buyer's agreement was executed between the parties on 21.12.2013 wherein provisionally a plot namely F-71 admeasuring 300 sq. yards in Ramprastha City was allotted to the complainant.

- III. That from the date of booking till the date of filing of the present complaint, the complainant has never raised any issue whatsoever and has now approached the authority with concocted and fabricated story to cover up his own defaults and raise false and frivolous issues and has therefore, filed the present complaint on false, frivolous, and concocted grounds. The conduct of the complainant clearly indicates that the complainant is a mere speculative investor having invested with a view to earn quick profit and due to unprecedented slowdown in the real estate market conditions, is hereby intending to make profit out of the miserable condition of the respondent.
- IV. That despite the wrath of real estate market conditions and crippling adversities faced, the respondent has continued to complete the development of the project and will positively be able to apply the occupation/part completion certificate by 31.12.2024, as already mentioned at the time of registration of the project with the authority or within such extended time, as may be extended by the authority.

- V. That complainant has maliciously alleged that they have paid almost full consideration towards the booking of the plot in the futuristic project of the respondent, while in reality they have only paid an amount of Rs.48,83,000/- which is merely a portion of the amount payable towards the plot. It is submitted that the said payments were not full and final payments as only basic amount is sought to be made at the booking stage which was done in 2006 and further payments inter alia towards government dues on account of EDC/IDC charges are payable at the time of allotment of plot and execution of plot buyer agreement.
- VI. That further no date of possession has ever been mutually agreed between the parties. That even in the provisional allotment letter dated 21.12.2013, it has been clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the authority which is within the knowledge of the complainant. That as per averments made by complainant, the petitioner has claimed interest from the year 2006 which also shows that the amount claimed by the complainant has hopelessly barred by limitation.
- VII. That the present Complaint is not supported by proper affidavit. That the same is unsigned or un-notarized. That the present complaint is bound to be dismissed on this ground alone with heavy costs.
- VIII. That the complainant is not "Consumer" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainant was 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 land 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.

- IX. The complainant 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 complainant has no intention of using the said plot for their personal residence or the residence of any of their family members and if the complainant had such intentions, they would not have invested in a project in which there was no certainty of the date of possession. The sole purpose of the complainant was to make profit from sale of the plot at a future date and now since the real estate market is in a desperate and non-speculative condition, the complainant has cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. That the complainant has purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said futuristic undecided plot and therefore, the present complaint being not maintainable and must be dismissed in limine.
- X. That complainant has approached the respondent office in June 2006 and have communicated that the complainant is interested in a project which is "not ready to move" and expressed their

interest in a *futuristic project*. That the complainant was not interested in any of the ready to move in/near completion projects of the respondent. It is submitted that a futuristic project is one for which the only value that can be determined is that of the underlying land as further amounts such as EDC/IDC charges are unknown and depends upon the demand raised by the statutory authorities. That on the specific request of the complainant, the investment was accepted towards a futuristic project and no commitment was made towards any date of handover or possession since such date was not foreseeable or known even to the respondent. The respondent had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainant towards development charges, but the complainant was duly informed that such charges shall be payable as and when demands will be made by the Government. The complainant is elite and educated individuals who have knowingly taken the commercial risk of investing a project the delivery as well as final price were dependent upon future developments not foreseeable at the time of booking transaction. Now the complainant is trying to shift the burden on the respondent as the real estate market is facing rough weather.

- XI. That the 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

authority is precluded from entertaining the matter due to lack of cause of action and lack of jurisdiction of the authority.

- XII. That the Haryana Real Estate Regulatory Authority 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 rules. The rule 28 deals with the provisions related to the jurisdiction of the authority.
- XIII. 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.
- XIV. That the applicants are educated and elite individuals and had complete understanding of the fact that unless zoning plans have been approved their investment is in the shape of an undeveloped agricultural land; however as and when zoning plans have been approved, it will be possible to implement the development of a residential plotted colony in the area and the investment of the complainant will appreciate substantially. This clearly shows that the complainant had sheer commercial motives. It is submitted

that an investor in a futuristic undeveloped plot cannot be said to be a genuine buyer by any standards.

- XV. That the statement of objects and reasons as well as the preamble of the said Act categorically specify the objective behind enacting the said Act to be for the purpose of protecting the interests of consumers in the real estate sector. However, the complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the RERA. The complainant is only an investor in the present project who has purchased the present property for the purposes of investment/commercial gain. The present complaint is a desperate attempt of the complainant to harass the respondent and to harm the reputation of the respondent.
- XVI. That since the RERA Act does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 1986. 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 complainant is a mere investor who has invested in the project for commercial purposes.
- XVII. That complainant has nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". Therefore, the complainant cannot be said to be consumers of respondent within the caricature of consumer within the Consumer Protection Act, 1986. The

complainant has deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf, the authority may strictly direct the complainant to adduce any documentary evidence in support of their averments.

XVIII. That the complainant is already in ownership of one property which the complainant has materially concealed. Hence, by any standard of imagination, the present complainant cannot to be said to have purchased the present property for personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or gain, the complainant is plainly investors who have filed the complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, the complainant cannot be said to have approached this authority with clean hands and have approached this authority only with malafide intention to harass the respondent in the most harm causing way possible.

XIX. The complainant is not entitled to claim possession as claimed by the complainant in the complaint is clearly time barred. The complainant has itself not come forward to execute the buyer's agreement and cannot now push the entire blame onto the respondent. That it is due to lackadaisical attitude of the complainant 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 complainant herein 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 complainant 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 complainant is made crystal clear with the present complaint and concretizes the status of the complainant 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.

XX. That the complainant has concealed its own inactions and defaults since the very beginning. The complainant has deliberately concealed the material fact that the complainant is at default due to non-payment of developmental charges, govt charges (EDC & IDC), PLC and interest free maintenance security (IFMS), which has also resulted into delay payment charges/interests.

XXI. The initial date of booking to the filing of the present complaint, the complainant has never raised any issues or objections. Had any valid issue been raised by complainant 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 the respondent, the complainant has filed the present complaint

based on fabricated story woven out of threads of malice and fallacy.

XXII. The respondent submitted that the proposed estimated time of handing over the possession of the said plot 30+6, months from the date of execution of this agreement dated 24.12.2013 which comes to 24.12.2016, and not 30 months from the dated of execution of this agreement. That the said proposed time period of 36 months is applicable only subject to force majeure and the complainant having complied with all the terms and conditions and not being in default of any terms and conditions and not being in default of any the terms and conditions of the plot buyer agreement, including but not limited to the payment of instalments. This was provided in clause 11 of the plot buyer agreement which may kindly be referred in reply to the contents of this para and the same is not reproduced for the sake of brevity.

XXIII. That section 19(3) of the Act provides that the allottee shall be entitled to claim the possession of the apartment, plot, or building, as the case may be, as per the declaration given by the promoter under section 4(2)(I)(C). The entitlement to claim the possession or refund would only arise once the possession has not been handed over as per the declaration given by the promoter under section 4(2)(I)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(I)(C) that it would complete the project by 31.12.2024 or with such extended time, as may be extended time, as may be extended by

this authority. Thus, no cause of action can be said to have arisen to the complainant in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.

XXIV. That apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent: -

- 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 complainant has indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of authority and in further view of the fact the complainant has 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 authority and hence the complaint is liable to be dismissed on this ground as well.
- That the complainant primary prayer for handing over the possession of the said plot is entirely based on imaginary and concocted facts by the complainant 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 complainant has complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated June, 2006 was made by the complainant towards a *future potential project* of the respondent and there was no question of handover of possession within any fixed time period as falsely claimed by the complainant; hence the complaint does not hold any ground on merits as well.

- The complainant has approached the respondent, it was made unequivocally clear to the complainant that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land and 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 complainant. 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.
- That even in the adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyer/allottee. 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 development of the project.

XIII. The projects in respect of which the respondents have 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 submissions 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 The Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding the complaint not signed and proper verified

10. The counsel for the respondent has raised contention that the complaint is not supported by proper affidavit with a proper verification. The authority observes that the complaint is signed by the complainant and his counsel and affidavit is attested by the Notary Government of Haryana, by Ram Niwas Malik Advocate, Gurugram on

09.07.2021. So the allegation of the respondent is liable to be dismissed.

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

11. The counsel for the respondents has raised contention that the entitlement to claim possession or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
12. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
13. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

.....

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”

14. The time period for handing over the possession is committed by the builder as per the relevant clause of plot buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the plot buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(I)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the plot buyer's agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.*** and has observed as under:

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

F.III Objection regarding entitlement of DPC on ground of complainant being investor

15. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of 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 complainant is buyer and they have paid total price of Rs.43,83,000/- to the promoter towards purchase of an apartment in the project of the promoter. At

this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the plot buyer's agreement executed between promoter and 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. 000600000010557 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 allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

G.I Delayed possession charges

16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

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

“11. Schedule for possession

- (a) *“The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan.*
- (b)
- (c)
- (d) ***Failure of Company to offer possession and payment of compensation.***

In the event the Company fails to offer of possession of the said plot, within thirty (30) months from the date of execution of this Agreement then after the expiry of grace period of 6 months from the said 30(thirty) months subject to the intending Allottee(s) having made all payments as per the payment plan and subject to the terms, conditions of this Agreement and bring force majeure circumstances,”

18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment by the intending complainant of total price, stamp duty,

registration charges and any other changes due and payable according to the payment plan. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the plot buyer 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.

19. **Admissibility of grace period:** The respondent has submitted that the proposed estimated time of handing over the possession of the said plot was 30+6 months i.e. 36 months from the date of execution of plot buyer agreement dated 24.12.2013 which comes out to be 24.12.2016 and not 30 months from the date of the agreement. As per clause 11(a) of the plot buyer's agreement, the promoter has proposed to hand over the possession of the plot within 30 months from the date of execution of this agreement subject to timely payment by the intending allottee(s) of total price, stamp duty, registration charges,

and any other charges due and payable according to the payment plan. The authority observed that in the said clause, the respondent has failed to mention any expression w.r.t entitlement of grace period for calculating due date of possession, therefore, the promoter /respondent is not entitled to any grace period.

20. **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.

21. 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.

22. 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%.

23. 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;"*

24. 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.

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing

over possession by the due date as per the agreement. By virtue of clause 11 of the agreement executed between the parties on 24.12.2013, the possession of the subject plot was to be delivered within a period of 30 months from the date of execution of this agreement which comes out to be 24.06.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 24.06.2016. The respondent has failed to handover possession of the subject plot till date of this order. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 24.06.2016 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

26. The allottee has 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

27. 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 i.e. 9.30% p.a. for every month of delay from the due date of possession i.e., 20.08.2016 till the date of handing over possession after obtaining the receipt of completion certificate/part completion certificate from the competent authority,
- ii. The promoter may credit delay possession charges in the ledger account or statement of account of the unit of the allottee. If the amount outstanding against the allottee is more than the DPC this will be treated as sufficient compliance of this order.
- iii. If there is no amount outstanding against the allottee or less amount outstanding against the allottee then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottee.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The arrears of such interest accrued from 24.06.2016 till the date of order by the authority shall be paid by the promoter to the allottee 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.

- vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which are the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - vii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
 - viii. The promoter is directed to furnish to the allottee statement of account within one month of issue of this order. If there is any objection by the allottee on statement of account, the same be filed with 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 then the allottee may approach the authority by filing separate application.
28. Complaint stands disposed of.
29. 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