

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

Complaint no. : 2899 of 2021
First date of hearing: 10.09.2021
Date of decision : 10.09.2021

1. Mr. Vipul Malik
2. Mrs. Garima Malik

Both RR/o: - B-254A, Ground Floor,
Greater Kailash- I, New Delhi- 110048

Complainants

Versus

M/s Ramprashtha Promoters and
Developers Private Limited
Regd. Office at: - Plot No. 114, Sector-44,
Gurugram-122003

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Sh. Vijender Parmar
Ms. R Gayatri

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 03.08.2021 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	"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. D-139, Block- D [Page 30 of complaint]
8.	Unit measuring	200 sq. yds.
9.	Date of allotment letter	12.12.2013 [Page no. 24 of complaint]
10.	Date of execution of plot buyer agreement	20.12.2013 [Page no. 27 of complaint]
11.	Payment plan	Possession linked payment plan. [Page no. 42 of complaint]
12.	Total consideration	Rs.71,85,000/-

		[as per payment plan Page no. 42 of complaint]
13.	Total amount paid by the complainants	Rs.67,97,000/- [as per receipt information page no. 17 to 22 of the 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 no. 33 of complaint]	20.06.2016
15.	Delay in handing over possession till date of this order i.e. 10.09.2021	5 year 2 months and 21 days

B. Facts of the complaint

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

- I. The complainants are allottee of residential plot no. 139 in block-D admeasuring approximately 200 sq. yards in Ramprastha City, situated in Sectors 92,93 and 95, revenue estates of village Wazirpur and Mewka, Gurugram.
- II. That the respondent has advertised themselves as a very ethical and promising business group that lives onto its commitments in delivering its real estate projects as per promised quality standards and agreed timelines; that the respondent while launching and advertising any new project always commits and promises to the targeted consumer that their space will be completed and delivered within the time frame agreed initially in

the agreement while selling the developed residential plots to them. The respondent also assured to the consumers including the complainants that he has secured all the necessary sanctions and approvals from the appropriate authorities for completion of the real estate project sold by them to the consumers in general.

- III. That the respondent therefore used this tool, which is directly connected to emotions of gullible consumers including the complainants, in its marketing plan and always represented and warranted to the consumers that the developed plots in the Ramprastha City will be delivered within the agreed timelines.
- IV. That somewhere in the year of 2006, the respondent through its marketing and advertisement via various mediums & means approached the complainants and represented that respondent is inviting applications for the allotment of residential plot(s) in the project Ramprastha City and offered to sell plot in the proposed project. The respondent has also shown the brochures and advertisement material of the said project to the complainants and assured that the allotment letter and plots buyer's agreement for the said project would be issued to the complainants upon payment of booking amount in terms of the payment plan. Accordingly, the complainants after going through the detailed brochure of the said project and upon relying on the representations and warranties of the respondents and the brand

value associated with the respondent as a part of Ramprastha Group, booked a residential plot of 200 sq. yard (approx.) in the project being developed by the respondents for a total consideration of Rs.71,85,000/- and in terms of payment pay made a payment of Rs.36,00,000/- towards booking amount in following manner during different times in 2006.

- V. That the aforesaid booking was confirmed by the respondent by issuing allotment letter dated 12.12.2014 to complainant containing the terms and condition of such booking of residential plot no. D-139, in Ramprastha City and assured to provide the complainants a serene surrounding and comfortable and living alongside green leisure valley.
- VI. That the date of booking and till today, the respondents had raised various demands for the payments from the complainants towards the sale consideration of said residential plot no. D-139 and the complainants have duly paid and satisfied all those demands as per the payments schedule and plot buyer agreement without any default or delay on their parts and have also fulfilled otherwise also their part of obligations as agreed in the plot buyer agreement. The complainants were and have always been ready and willing to fulfill their part of agreement, if any pending. He had paid more than 80% of the total sale consideration to respondent for the said residential plot as demanded as on day.

VII. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said residential plot and regarding obtaining the required approvals from statutory authorities, which amounts to unfair trade practice, which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said residential plot by not delivering the plot within agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy said residential plot basis its false and frivolous promises and representations about the obtaining statutory approvals the delivery timelines aforesaid project. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the developed plots within the timelines agreed in the plot buyer's agreement.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s)

- I. To direct the respondent to pay the interest at the rate of 18% p.a. on the amount of Rs.67,97,000/- for the said residential plot on account of delay in offering possession from the date of payment till delivery of physical and vacant possession of said residential plot.

- II. To directing the respondent to handover the possession of residential plot no. D- 139 admeasuring 200 sq. yards of the said project.
5. On the date of hearing, the authority explained to the respondent /promoter on 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 contested the complaint on the following grounds. The submission made therein, in brief is as under: -
- 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 respondents contained in the said application.
 - ii. That the complainants have 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 complainants 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 complainants have paid a booking amount of Rs.36,00,000/- towards booking of the said project pursuant to which a receipt bearing no. 052 dated 01.04.2013 was issued to the complainant. Thereafter, in the year 2014, the respondent has issued a welcome letter and provisional allotment letter dated 12.12.2014 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 20.12.2013 wherein provisionally a plot namely D- 139 admeasuring 200 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. 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 complainants have 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.67,97,000/- 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 12.12.2014, 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 complainants. That as per averments made by complainants, the petitioner has claimed interest from the year 2006 which also shows that the amount claimed by the complainants have hopelessly barred by limitation.
- vii. That, without admitting to such date of handover of possession cited by the complainants, even if the date of possession was to be construed in April 2009, the period of limitation has come to an end in the year April 2012.

- viii. That the complainants are not “Consumer” 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 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 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 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 complainants have 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 complainants were 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 complainants have 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 complainants have approached the respondent office in March/ April 2007 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 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 complainants, 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 complainants were duly informed that such charges shall be payable as and when demands will be made by the Government. The complainants are 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 complainants are trying to shift the burden on the respondent as the real estate market is facing rough weather.

- xi. That on the date of provisional allotment of the plot even the sectoral location of the plot was not allocated by the respondent. The plot at the date of booking/provisional allotment was nothing more than a futuristic project undertaken to be developed by them after the approval of zoning plans and completion of certain other formalities. A plot in a futuristic project with an undetermined location and delivery date cannot be said to be a plot purchased for residential use by any standards. Therefore, the payment made by the complainant towards the said plot cannot be said to be made towards the plot purchased for residential use instead it was a mere investment in the futuristic project of the respondent. The complainants therefore only invested in the said plot so that the same can be used to derive commercial benefits/gains.
- xii. That the complainants cannot be said to be genuine consumers by any standards; rather the complainants are mere investor in the futuristic project of the respondent. 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.
- xiii. That complainants have knocked at the doors of this authority for recovery of their investments under the disguise of a "genuine Consumer". That complaint makes it apparent that the complainants are not consumers within the lines of the Consumer Protection Act but mere investors who intends to recover the amounts paid by them along with extracting huge amounts of interest from the respondent. The complaint is a malafide attempt

by the complainants to abuse the forum of this authority for recovery of their investments.

- xiv. That the 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 authority is precluded from entertaining the matter due to lack of cause of action and lack of jurisdiction of the authority.
- xv. That the Haryana Real Estate Regulatory Authority Amendment Rules, 2019 has been notified on 12.09.2019 whereby inter alia amendments were made to rule 28 and 29 of the Haryana rules. The rule 28 deals with the provisions related to the jurisdiction of the authority.
- xvi. That 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 when a question was raised before the said high court pertaining to the jurisdiction of the authority and the adjudicating officer with respect to the Haryana amendment rules, 2019. 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 is 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.

- xvii. 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.
- xviii. 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.
- xix. The complainants have knowingly invested in an undeveloped land in a futuristic area where on the date of investment by the complainants, even the zoning plans were not sanctioned by the Government. It is understood that he has 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 complainants will appreciate substantially. This clearly shows that the complainants have sheer commercial motives. That an investor in a futuristic undeveloped plot cannot be said to be a genuine buyer by any standards.

- xx. That complainants have booked a plot admeasuring 200 sq. yards in the future potential project in "Ramprastha City" of the respondent in the year 2006 against which a tentative registration was issued vide receipt no. 052 dated 01.04.2013 after a payment of Rs. 36,00,000/- and accordingly an allotment letter dated 12.12.2013 was issued by the respondent also mentioning the fact that a specific plot number shall be earmarked once the zoning plans have been approved by the concerned authorities. The complainants have been made clear about the terms and conditions at the time of booking of the plot themself.
- xxi. 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 complainants cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the Haryana Real Estate Regulation and Development Act, 2016. The complainants are only an investors 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 complainants to harass the respondent and to harm the reputation of the respondent.

- xxii. That since the Act does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 1986 (hereinafter referred to as the CPA). That the plain reading of the definition of the term "Consumer" envisaged under the CPA makes it clear that complainants does not fall within the walls of the term "Consumer". That further the complainants are mere investor who has invested in the project for commercial purposes.
- xxiii. That complainants have nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". Therefore, the complainants cannot be said to be consumers of respondents within the caricature of consumer within the Consumer Protection Act, 1986. The complainant has deliberately concealed the motive and intent behind purchasing of the unit. In this behalf, the authority may strictly direct the complainant to adduce any documentary evidence in support of their averments.
- xxiv. That the entire transaction of the complainant with the respondent of purchasing a unit in the project was for a "commercial purpose" and hence, in view of catena of judgments of the Hon'ble National Consumer Disputes Redressal Commission, the complaint before

the authority is not maintainable in its present form and hence is liable to be dismissed at its very beginning.

- xxv. That the complainants are not entitled to claim possession 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 into the respondent. That it is due to lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited by them which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainants cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottee at stake. If at all, the complainants have any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainants are made crystal clear with the present complaint and 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.

- xxvi. That the complainants were waiting for the passage of several years to pounce upon the respondent and drag the respondent is unnecessary legal proceeding. 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.
- xxvii. That the complainants have concealed its own inactions and defaults since the very beginning. The complainants have 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.
- xxviii. That the respondent had to bear with the losses and extra costs owing due delay of payment of developmental charges, Govt charges (EDC & IDC), PLC and interest free maintenance security (IFMS) on the part of the complainants for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainants.

- xxix. 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 huge amounts in the form of exaggerated interest.
- xxx. That this conduct of the complainants itself claims that the complainants are mere speculative investor who has 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 to quickly grab the possession along with high interests on the basis of concocted facts.
- xxxi. 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 have indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of the authority and in further view of the fact the complainants have 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.

- xxxii. That the complainants primary prayer for handing over the possession of the said plot 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 complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated April 2007 was made by the complainants towards a *future potential project* of them and there was no question of handover of possession within any fixed time period as falsely claimed by the complainants; the complaint does not hold any ground on merits as well.
- xxxiii. That the respondent has applied for the mandatory registration of the project with the authority but the same is still pending for approval on the part of the authority. However, in this background 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 authority. 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 them. This by any matter of fact be counted as a default on the part of the respondent.

- xxxiv. 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 plot.
- xxxv. It is submitted that when the complainants have approached the respondent, it was made unequivocally clear to the complainants that a specific plot 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 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.
- xxxvi. 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.

xxxvii. The complainants are short-term speculative investor, their only intention was to make a quick profit from the resale of the land and having failed to resell the plot due to recession and setbacks in the real estate world, have resorted to this litigation to grab profits in the form of interests. It is 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 investor.

xxxviii. That the delay has occurred only due to unforeseen and unpredictable 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 plot 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.

xxxix. 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 20.12.2013 which comes to 20.12.2016, 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 complainants 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.

xl. That section 19(4) of the Act provides that the allottee shall be entitled to claim the possession of the apartment, plot, or building, as the case may be, as per the declaration given by the promoter under section 4(2)(l)(C). The entitlement to claim the possession or refund would only arise once the possession has not been handed over as per the declaration given by the promoter under section 4(2)(l)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(l)(C) that it would complete the project by 31.12.2024 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 complainants in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.

- xli. 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 complainants at a later stage.

F. Findings on the objections raised by the respondents

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

10. The respondent has taken a stand that the complainants are the investor and not consumer, therefore they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the

interest of 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 plot buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs.67,97,000/- 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 complainant, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The

Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

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

11. The counsel for the respondent 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 apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to

section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.*** and has observed as under:

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

G. Findings on the relief sought by the complainants.

G.I Delayed possession charges.

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

"Section 18: - Return of amount and compensation

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

.....

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

16. 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 changes 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, the company shall pay compensation to the intending Allottee(s) calculated at the rate of Rs.90/- per sq. yard. Per month on the full area of the Said Plot which both parties have agreed is just and equitable estimate of the damages that the intending Allottee(s) may suffer and the intending Allottee(s) agrees that he/they shall not have any other claims/rights whatsoever. The adjustment of compensation shall be done at the time of execution of the conveyance deed."

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment by the intending complainants of total price, stamp duty, registration charges and any other 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 allottees 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 allottees 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 allottees 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 allottees are left with no option but to sign on the dotted lines.

18. **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 20.12.2013 which comes out to be 20.12.2016 and not 30 months from the date of the agreement. As per clause 11 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.
19. **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.

20. 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.
21. 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%.
22. 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;"*

23. 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.

24. 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 11 of the agreement executed between the parties on 20.12.2013, 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 20.06.2016. 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 20.06.2016. 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., 20.06.2016 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.

25. 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

26. 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., 20.06.2016 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 allottees. If the

amount outstanding against the allottee is more than the DPC this will be treated as sufficient compliance of this order.

- iii. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
- iv. The 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 27.06.2016 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vii. The respondent shall not charge anything from the complainants which is not the part of the 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.

27. Complaint stands disposed of.

28. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.09.2021
Judgement uploaded on 10.11.2021

HARERA
GURUGRAM