

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

Complaint no. : 3004 of 2019
First date of hearing: 13.12.2019
Date of decision : 16.09.2021

Chander Shekhar Sachdeva
R/O - 186, Vaishali, Pitampura,
New Delhi- 116088

Complainant

Versus

M/s Sobha Limited
Regd. office: - Sobha, Sarajapur Marathahalli,
Devarabisanahalli, Bellandur post,
Bangalore, 560103

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Sh. C.L Dhawan
Sh. Dheeraj Kapoor

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 19.07.2019 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*.

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	Sobha "International City" Sector- 106, 108, and 109 Gurugram
2.	Project area	149.093 acres
3.	Nature of the project	Residential project
4.	DTCP license no. and validity status	190 of 2008 dated 22.11.2008 valid upto 22.11.2025
5.	Name of licensee	M/s Chintal export Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	B-103, block-B [Page no. 43 of complaint]
8.	Unit measuring	7330.89 sq. ft.
9.	Date of execution of unit buyer's agreement with complainant and his brother	22.11.2012 [Page no. 38 of complaint]
10.	Date of execution of new unit buyer's agreement with the complainant	05.11.2018 [Page no. 74 of complaint]
11.	Date of allotment letter	09.11.2012 [Page no. 35 of complaint]
12.	Payment plan	Construction linked payment plan. [Page no. 71 of complaint]
13.	Total consideration	Rs. 7,72,90,611/-



		[As per provisional statement of accounts page no. 119 of reply]
14.	Total amount paid by the complainants	Rs. 7,71,19,788/- [As per provisional statement of accounts page no. 119 of reply]
15.	Due date of delivery of possession as per clause IV.1 of the unit buyer agreement 42 months from the date of signing of agreement plus 6 months grace period to complete the construction of the allotted unit. [Page 46 of complaint]	22.05.2016 [Note: - 6 months grace period is not allowed]
16.	Date of handover letter of possession	01.12.2018 [Page no. 80 of reply]
17.	Occupation Certificate	27.06.2017
18.	Delay in handing over possession till 01.02.2019 i.e. date of possession letter (01.12.2018) + 2 months	2 years 8 months and 10 days

B. Facts of the complaint

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

- I. That the complainant is a law-abiding citizen who has purchased a plot in the township project of the respondent company namely, "International City" located within the boundaries of Sector 106, 108 and 109, Urban Estate, Gurugram Haryana. The complainant has been cheated by the malpractices adopted by them being a developer and promoter of real estate, since long time. It is submitted that the complainant was lured by the advertisements

and after being assured of a quiet and peaceful living and with a mindset to get away from the hustle-bustle of Delhi, the complainant visited the offices of the respondent. That the complainant was represented and swayed by the representatives of the respondent company to purchase residential plot with them and since the complainant was looking for an independent house, the representatives of the respondent coloured a rosy picture and allured the complainant by making them believe that the plots being developed by the respondent are more comfortable luxury space and is full of amenities and facilities which would not be available in any independent house in the area and hence were induced into purchasing the plot with the respondent. The respondent company made several representations of their project to the complainant alluring him to book the plot in their project "International City" located within the boundaries of Sectors 106, 108 and 109, Urban Estate, Gurugram Haryana. The respondent had made several claims pertaining to the architecture and the landscape of the project.

- II. Based on the representations of representatives of the respondent and the brokers associated with the respondent the complainant was lured into purchasing unit bearing no B 103 in a project being developed by the respondent namely "International



City" located within the boundaries of Sectors 106, 108 and 109, Urban Estate, Gurugram Haryana.

- III. That it is not out of place to mention that the respondent company under the guise of being a reputed builder and developer has perfected a system through organized tools and techniques to cheat and defraud the unsuspecting, innocent, and gullible public at large. The respondent had advertised its projects and facility as well as concept of project "International City" extensively through advertisements, but not delivered it in reality. It is pertinent to mention that the respondent before executing the builder buyer agreement issued the allotment letter dated 09.11.2012 and thereafter upon insistence got issued the builder buyer agreement.
- IV. That in furtherance of the misrepresentation, the complainant was made to believe that the entire project has been sold. That the complainant was so influenced with the false representations of the representatives of the respondent that he agreed for the purchase of the plot. Accordingly, plot/unit no. B - 103 having saleable built-up area measuring 7330.89 sq. ft. constructed upon plot admeasuring 500 sq. yards was allotted to the complainant. That initially the plot was allotted in the joint name of the complainant along with his brother Amit Sachdeva, however, in terms of internal family arrangement, the complainant requested

the respondent to delete the name of the brother and execute the sale deed in favour of the complainant alone, which was agreed by the respondent and upon instructions of the respondent, the name of the brother of the complainant was deleted and accordingly the complainant became the sole allottee of the plot. That the complainant has paid an amount of Rs.7,71,19,789/- towards the total sale consideration i.e. Rs.7,53,38,566/-

- V. That the respondent to dupe the complainant in their nefarious activities and to create a false belief that the project shall be completed in time bound manner and in the garb of the unit buyer agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.
- VI. That the respondent in an endeavour to extract money from allottees devised a payment plan under which respondent citing milestone for construction progress stages, or development of the site, and after taking the same respondent has not bothered to committed development of the project in time bound manner.
- VII. That the respondent has received more payment than was agreed between the parties as per the payment schedule and failed to hand over the possession of the plot within time agreed in the unit buyer agreement.
- VIII. That the complainant had repeatedly been seeking updates on the development of the project and to the issuance of the occupancy

certificate. However, the queries of the complainant were never replied to, and the respondent was always vague and evasive to such requests. It is submitted that as per terms of unit buyer's agreement dated 22.11.2012, the respondent had committed in clause IV point 1 and was accordingly obliged and liable to give possession of said unit within 42 months from execution of unit buyer agreement i.e. from 22.11.2012. Accordingly, the unit should have been delivered way back before May 2015. It is further worth to mention here that admittedly the respondent has not made any communication regarding any unforeseen circumstance during the period of 42 months and even subsequent to the expiry of 42 months and as such the extension (grace period) of 6 months is of no avail to the respondent as there was no unforeseen and unplanned project realities due to which the respondent could have delayed the project.

- IX. That it is not out of place to mention that the respondent has blatantly issued false information, despite the fact that they had no right to issue such information. It is submitted that one such communication is letter dated 05.06.2017 sent by the complainant, wherein the respondent has replied by way of email dated 22.06.2017 and a letter dated 05.07.2017 and surprisingly the contents of both the replies for letter dated 05.06.2017 are different.



- X. That the respondent at no stage informed the complainant of the status and development of the project but kept on demanding payments in the garb of development which was never carried out. The complainant in order to meet demands raised by the respondent also had secured a loan and has paid huge amounts in interests (i.e., Rs.2,53,63,303/- till august 2018) to the bank.
- XI. That the respondent has failed to meet the obligations and with malafide intentions have collected huge amount of money from the complainant. This act on part of the respondent has not only caused huge financial losses but has also upset the family life.
- XII. That the complainant with good intentions has paid all the demands raised by respondent, however respondent has failed to meet their obligations and commitments. This undue delay in handing over the possession of the unit for more than 2 years from committed date as per agreement is not only a breach of trust but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainant.
- XIII. That even on the bare perusal of various clauses of the buyers agreement it represents that the terms and conditions are unilateral and arbitrary wherein the respondent has an upper hand in the entire transaction. As per the terms and conditions the respondent had the authority to impose an exorbitant rate of

interest on the complainant to the tune of 18% on delayed payments and whereas, the respondent was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 5/- per sq. ft. per month for the period of delay. It is submitted that as the terms and conditions of the unit buyer agreement are unilateral, this authority shall not take into consideration the terms and conditions of the agreement during the adjudication of the case.

XIV. That the above-mentioned term was introduced and explained by the legislators, in order to avoid the exploitation of one party by the other, by providing a level playing field where similar interests have to be paid by the parties for any default on their part. That the said section has been miserably defeated and contravened by the unilateral clauses of the respondent agreement. Thus, the authority is requested to take a note of the same and grant appropriate relief to the complainant herein as he has been subjected to financial and emotional distress because of the said unilateral and illegal clauses.

XV. That the complainant is entitled to compensation for delay. It is submitted that the complainant has been deprived from the use of his house for several years. It is submitted that during such time the complainant has been mentally and physically harassed by the respondent having been made to run from pillar to post.



XVI. That this authority has the jurisdiction to entertain and try the present complaint as the project of the respondent is in Gurugram and the respondent is also situated within the jurisdiction of this authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. To direct the respondent to pay delayed interest amount @12% p.a. on compounded rate on the amount already paid by the complainant to the respondent from the committed date of delivery of the unit till the actual date of handover the unit to the complainant.
- ii. To pass any such other order(s) as his authority may deem fit and proper in the interest of justice.

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 raised certain preliminary objections and has contested the present complaint on the following grounds:

- I. That at the very outset, it is most respectfully submitted that the complaint filed by the complainant is not maintainable and this

regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.

- II. The phase-I of the project i.e. "International City" at Sectors-106, 108 and 109, Gurugram, Haryana to the unit in question and of the respondent is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 nor the said project is registered with this regulatory authority. As per the definition of "ongoing projects" under rule 2(1)(o) of the said rules, any project for which an application for occupational certificate, part thereof or completion certificate or part completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this regulatory authority.
- III. That the respondent had already obtained the part completion certificate for the said project on 17.10.2014 and had also obtained the occupation certificate for the said unit on 27.06.2017, which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per rule 2(1)(o)(i) and 2(1)(o)(ii) and the present case is squarely covered under the first exception provided under rule 2(1)(o) and also under the second exception and therefore this



regulatory authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected.

- IV. That without prejudice to the above, the above stated position is further substantiated by rule 4(5) which clearly states that any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules i.e. 28.07.2017, is outside the purview of this regulatory authority, unless the said application is refused by the competent authority and it is only then that the project is required to be registered within 30 days of the receipt of such refusal.
- V. That the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint under rule 28 of the said rules and is seeking the relief of interest and compensation u/s 18 of the said Act. Therefore, even if the project of the respondent had been covered under the definition of "ongoing projects" and registered with this regulatory authority, the complaint, if any, still would have been required to be filed before the adjudicating officer under rule 29 of the said rules and not before this regulatory authority under rule 28 as this regulatory authority has no jurisdiction

whatsoever to entertain such complaint and such complaint is liable to be rejected.

- VI. That without prejudice to the above, the above stated position is further substantiated by the proviso to section 71 which clearly states that even in a case where a complaint is withdrawn from Consumer Forum/Commission/NCDRC for the purpose of filing an application under the said Act and said rules, the application, if any, can only be filed before the adjudicating officer and not before the regulatory authority.
- VII. That the complaint is also not supported by any proper affidavit with a proper verification. In the absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.
- VIII. That, without prejudice to the above, it is stated that the statement of objects and reasons as well as the preamble of the said Act clearly state that the Act is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. The Act is not enacted to protect the interest of investor. As the said Act has not defined the term consumer, therefore the definition of "consumer" as provided under the consumer protection act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not consumer and nowhere in the present complaint



has the complainant pleaded as to how the complainant is a consumer as defined in the consumer protection act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant entered into an agreement with the respondent to purchase the apartment in question. the complainant is the director of golden sparrow developers Pvt. Ltd., a company which deals in the sale and purchase of properties and also works as a broker/real estate agent for other real estate companies, which can be ascertained from its MOA and AOA. That the complainant company is also the broker for the unit in question, which can be ascertained from the booking application form and letter dated 10.11.2012 requesting the adjustment of commission. Therefore, the complainant is an investor, who never had any intention to buy the unit for his own personal use and has now filed the present complaint on false and frivolous grounds. It is most respectfully submitted that this regulatory authority has no jurisdiction to entertain the present complaint as the complainant has not come to this regulatory authority with clean hands and has concealed the material fact that he has invested in the unit for earning profits and the transaction therefore is relatable to commercial purpose and the complainant not being a consumer within the meaning of section 2(1)(d) of the consumer protection act, 1986, the complaint itself



is not maintainable under the said act. This has been the consistent view of the National Consumer Dispute Redressal Commission.

IX. That it is also most respectfully submitted that this regulatory authority has no jurisdiction to entertain the present complaint as the complainant has not come to this regulatory authority with clean hands and has concealed the material fact that:

- After obtaining the occupation certificate dated 27.06.2017, the respondent, issued the letter of offer of possession dated 16.08.2017 for the said unit and requested the complainant to make the balance payments. However, the complainant, vide request letter dated 11.09.2018 along with affidavits, indemnity bond and a new booking application form, applied for the deletion of name of his brother Amit Sachdeva, who was the co-allottee, and vide request letter dated 06.10.2018, requested for the execution of a new unit buyer agreement in his name. At the request of the complainant, the name of Amit Sachdeva was deleted, and a new unit buyer agreement was executed in the name of the complainant on 05.11.2018. The complainant, without any objection, demur or dispute, made the payments of dues after which, vide unit handover letter dated 01.12.2018, the complainant, once again without any objection, demur or dispute, took over the satisfactory, vacant



and peaceful physical possession. The complainant also certified that the unit has been completed in all respects as per the agreement and also accepted the possession of the said unit. Having already taken the possession of the unit the complainant is not covered, anymore, under the definition of an "allottee" as provided under section 2(d) of the said Act, and therefore this regulatory authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

- The complainant has been a defaulter, duly admitted in his letter dated 16.11.2016, having deliberately failed to make the payment of various instalments within the time prescribed, which resulted in outstanding dues and delay payment charges. That at the request of the complainant and as a goodwill gesture, the respondent waived off the interest amount of Rs.4,72,742/-. There are also holding charges of Rs.10,99,634/- which have not been paid by the complainant. However, now that the complainant has filed the present complaint, the respondent reserves its right to recover that interest and holding charges from the complainant.

X. That after receiving the letter of offer of possession dated 16.08.2017, the complainant, without any objection, demur or dispute, made the payments and took the peaceful and vacant

possession and have now filed the present complaint on false and frivolous grounds.

- XI. That from the date of booking till the filing of the present complaint, the complainant has never ever raised any issue whatsoever and has now concocted a false story and raised false and frivolous issues and has filed the present complaint on false, frivolous, and concocted grounds. This conduct of the complainant clearly indicates that the complainant is a mere speculator having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainant on false, frivolous and concocted grounds.
- XII. The complainant has concocted a false story to cover up his own default of non-payment of dues within the time prescribed and raised false and frivolous issues and the present complaint has been filed on false, frivolous, and concocted grounds. This conduct of the complainant clearly indicates that he is a mere speculator having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainant failed to perform his contractual obligations of making timely payments.
- XIII. Despite several adversities, the respondent has completed the construction of the unit and has already after obtained the occupation certificate dated 27.06.2017 and has also issued the letter of offer of possession dated 16.08.2017 for the said unit. The

complainant, without any objection, demur, or dispute, made the payments of dues after which, vide unit handover letter dated 01.12.2018, the complainant, once again without any objection, demur or dispute, took over the satisfactory, vacant and peaceful physical possession. The complainant also certified that the unit has been completed in all respects as per the agreement and accepted the possession of the said unit. Having already taken the possession of the unit, the complainant has now developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainant has origin and motive in sluggish real estate market.

- XIV. That the respondent, this regulatory authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the unit buyer's agreement signed by the complainant/allotment offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act said rules, has been executed between the between the or complainant and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the unit buyer is the unit buyer agreement dated 22.11.2012, executed much prior to coming into force of said Act or said rules.

The adjudication of the complaint for possession, refund, interest and compensation, as provided under section 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement. This submission of the respondent inter alia, finds support from reading of the provisions of the said Act and the said rules. Thus, in view of the submissions made above, no relief can be granted to the complainant.

E. Jurisdiction of the authority

7. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subjectmatter 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 was not proper affidavit with a proper verification.

10. The counsel for the respondent has raised contention that the complaint was not any 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 Govt. of India, Delhi on 21.06.2019. So the allegation of the respondent is liable to be dismissed.

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

11. 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 has 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 enabling 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 in question, it is revealed that the complainant is buyer, and he has paid total price of Rs. 7,71,19,788/-to the promoters towards purchase of a plot in the project of the promoters. 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;"

12. In view of abovementioned definition of "allottee" as well as all the terms and conditions of the plot buyer's agreement executed between promoters and complainant, it is crystal clear that the complainant is allottee 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.

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

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

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

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

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

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

14. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

“34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored.”

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot buyer's agreements have been executed in the manner that

there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant

G. I Delay 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. Section 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

17. Clause IV.I of the unit buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

IV. Completion and Possession

1. *Subject to timely payments by the Buyer(s), the company shall make its all efforts to complete construction/development of the Unit within on or before [42] months from the date of signing of this Agreement, subject to further grace period of [6] months to*

complete the construction of the unit, Force Majeure events restraints or restrictions from any court/statutory authorities etc. It is however understood between the parties that various books comprised in the residential project shall be complete in phases and handed over accordingly. In the event of any default or negligence attributable to the buyer(s) in fulfilment of terms and conditions of allotment, the company shall be entitled to reasonable extension in delivery of possession of the Unit to the Buyer(s). No claim by way of damages/compensation shall lie against the company in case of delay in handing over possession on account of any of the said reasons and the company shall be entitled to appropriate extension of time.”

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 and all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters 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 buyer developer 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:** As per clause IV (1) of the unit buyer's agreement, the respondent/promoter has proposed to hand over the possession of the apartment within 42 months from the date of signing of this agreement with a grace period of 6(six) months to complete the construction of the unit and force majeure which comes out to be 20.11.2016. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by November 2016. As per agreement to sell, the construction and development work of the project is to be completed by November 2016 which is not completed. It may be further stated that asking for the extension of time in completing the construction is not a statutory right nor has it been provided in the rules. Accordingly, in the present case this grace period of 6 months cannot be allowed to the promoter at this stage.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges 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.

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. Taking the case from another angle, the complainant/allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per relevant clauses of the allotment letter for the period of such delay; whereas the promoter was entitled to interest @18% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumer/allottee in the real estate sector. The clauses of the

allotment letter entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

23. 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., 16.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
24. 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 promoters, in case of default, shall be equal to the rate of interest which the promoters 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;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **9.30%** by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
26. On consideration of the documents available on record and submissions made by both the parties, 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 IV (1) of the unit buyer's agreement executed between the parties on 22.11.2012, possession of the booked unit was to be delivered on or before 22.05.2016. Occupation certificate has been received by the respondent on 27.06.2017 and the possession of the subject unit was offered to the complainants on 01.12.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 22.11.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 22.11.2012 to hand over the possession within the stipulated period.

27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 27.06.2017. The respondent offered the possession of the unit in question to the complainant only on 01.12.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 22.05.2016 till the expiry of 2 months from the date of offer of possession (01.12.2018) which comes out to be 01.02.2019.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f.

22.05.2016 till the expiry of 2 months from the date of offer of possession (01.12.2018) which comes out to be 01.02.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

I. Direction of the authority

29. 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 the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 22.05.2016 till 01.02.2019 i.e. expiry of 2 months from the date of offer of possession (01.12.2018). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the

allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

- iv. The respondent shall not charge anything from the complainant which is not the part of the unit buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of unit buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

30. Complaint stands disposed of.

31. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Vijay Kumar Goyal)

Member

Dated: 16.09.2021

Judgement uploaded on 23.11.2021