

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

Complaint no. : 3310 of 2021  
Date of filing complaint: 25.08.2021  
Date of First hearing : 30.09.2021  
Date of decision : 25.11.2021

Mr. Kunal Minda  
R/o: - Plot No. 407, Udyog Vihar Phase- III,  
Gurugram, Haryana

**Complainant**

**Versus**

M/s TATA Housing Development Company Limited  
Regd. Office at: - Flat no. GF-3, Naurang House, Plot  
no. 5, Block- 134, 21 Kasturba Gandhi Marg Delhi-  
110001

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. Harshit Batra  
Sh. Dheeraj Kapoor

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint 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 as provided under the provision of the



Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"TATA PRIMANTI", Sector- 72, Gurugram
2.	Project area	36.25 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	i. 155 of 2008 dated 14.08.2008 valid upto 13.08.2018. ii. 200 of 2008 dated 08.12.2008 valid upto 07.12.2018
5.	Name of licensee	Unitech Infratech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 98 of 2017 dated 28.08.2017 valid upto 30.06.2020
7.	Unit no.	501, 5 <sup>th</sup> floor Tower- 7 [Page no. 55 of complaint]
8.	Measurement of unit	3355 sq. ft.
9.	Date of execution of apartment buyer's agreement	Not executed
10.	Date of execution of booking application form	29.03.2013 [Page 26 of complaint]
11.	Allotment letter	31.03.2013 [Page 55 of complaint]
12.	Payment plan	Construction linked payment plan. [page no. 54 of complaint]



13.	Total consideration		Rs.3,13,68,375 /- [as stated by his brief fact page 2 of complaint]
14.	Total amount paid by the complainant		Rs.3,22,94,009.57/- [as per receipt information page no. 59 to 83 of complaint]
15.	Due date of delivery of possession as per clause 7.2 of booking application from: September 2017, but subject to force majeure circumstances and reason beyond the control of the developer [Page 56 of reply]		Cannot be ascertained from the application form attached by the complainant with his complaint but from the reply at page 56 annexure R-1, application form, the due date of possession has been indicated in September 2017. So, let it be 30.09.2017.
16.	Date of offer of possession		19.03.2018 [page no. 84 of complaint]
17.	Date of occupation certificate		09.03.2018 [Page 85 of reply]
18.	Delay in handing over possession till offer of possession i.e. 19.03.2018 + 2 months i.e. 19.05.2018		7 months and 19 days

**B. Facts of the complaint**

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

- I. That the complainant booked the unit with an amount of Rs.20,00,000/- vide cheque no. 025832 dated 10.11.2012. Upon such application, the complainant was allotted the unit on 31.03.2013.
- II. That the respondent was under obligation to execute builder buyer agreement as per section 13(1) of the Act. But the respondent failed to execute the agreement which is grave violation of section 13(1) of the Act. That the malafide, unlawful and harassing actions



of the respondent are evident from the very beginning of their relationship. In lieu of which, it is pertinent to note that the respondent sent letters to the complainant for registration of executed agreement, however, no agreement was executed in the first place. Moreover, additional charges for such execution were being levied by them. That requiring registration of an unexecuted document and demanding additional monies was merely to harass the complainant by demanding the performance of an impossible and an illegal action.

- III. That the unit was allotted for a total sales consideration of Rs. 3,13,68,375/- inclusive of other charges applicable as per application form. That both the parties were bound by the terms and conditions of the application form. It is apparent to mention that the possession clause 7(b) of the application form was left blank by the respondent and the same is evident from the said clause in the application form. This *malafide* and unlawful conduct of the respondent is highly condemned as it is against the objectives of the Act. That such actions of the builders are highly arbitrary as was held by the Bombay High Court in **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. SCC Online Bom 9302** that “...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance



to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements." That in light of the same, it must also be noted that the Act ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession form an inseparable part of the same. The respondent in not communicating the same stands in a grave *malafide* and unlawful conduct.

- IV. That the complainant, from time-to-time, remitted payments on account of charges for the unit along with other charges payable as per the terms and conditions of the application form, as and when demanded by the respondent as per the payment plan annexed in the application form. The total sum paid by the complainant to the respondent is Rs.3,13,68,375/-.
- V. That for the purpose of calculation of possession date in the absence of specific mention of the same, the Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)***; MANU/SC/0253/2018 observed that "*a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated*

*in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Hence, a reasonable time of 3 years computed from the date of allotment of the unit comes out to be 31.03.2016, which shall be referred to as the due date of delivery of possession.*

- VI. That delaying the timelines and to the utter shock and surprise of the complainant, the respondent offered possession on 19.03.2018 which cannot be regarded as a valid offer of possession since the development of the unit was incomplete. The complainant, having put a handsome amount of their hard-earned money and standing with the desires of attaining the possession of their unit, requested the respondent to offer the unit after its completion but the respondent kept asking for payment by threatening to impose holding charges and maintenance charges for the unit.
- VII. That the complainant sent e-mails dated 20.02.2021, 22.02.2021, 19.02.2021, 18.02.2021, 16.02.2021, 03.02.2021, 17.02.2021, 23.01.2020, 11.10.2019, 13.07.2019 to the respondent and asked about the date of possession of the unit but the respondent never committed a date on which the actual physical unit of the unit is to be given. But the respondent always responded maliciously and never committed a date of physical possession of the unit. That from the above-mentioned emails, it is evident that the

complainant was always ready to take the possession of the unit which was only delayed due to the non-compliance of the development activity of the unit.

- VIII. That vide email dated 13.07.2019, the respondent accepts taking more time to complete the unit. It is pertinent to note that these communications are after the respondent had offered the possession on 19.03.2018 which makes it evident that the offer of possession is not valid and hence any reminders following the same stands invalid.
- IX. That despite of the above-mentioned e-mails, the respondent never completed the unit which would be fit for possession. The offer of possession is for a unit which is not in a habitable condition. The respondent vide letter dated 30.01.2021 along with E-mail dated 21.03.2021 asked the complainant to pay the holding charges and maintenance charges as the possession is offered irrespective of physical handover not given. However, it needs to be noted that the delay in delivery of possession is due to the fault of the respondent and hence, levying the holding and maintenance charge is unlawful and illegal. In **ANITA JULIET SINGH & ORS vs. CITI CENTRE DEVELOPERS & ORS. (22.08.2019- RERA PUNJAB): MANU/RR/0590/2019**, it was held that the allottee is liable to pay maintenance charges from date of taking over the actual possession. That to charge the maintenance charge without



giving the physical possession/handover of the unit is a unilateral and unlawful demand.

- X. That it is extremely impertinent to note that the complainant always maintained a *bonafide* conduct from the very beginning. The complainant has paid all dues and yet has not received the physical possession of the unit. That out of all the demands raised by the respondent in letter dated 30.01.2021 and email dated 21.03.2021, the complainant objected to the paying of the holding and maintenance charges only. Saving that, the complainant paid the stamp duty against the unit and consequently wrote a letter to the respondent on 23.03.2021, which was however returned due to change in address.
- XI. That in the absence of privity to contract, the complainant cannot be made liable for such charges. The Punjab and Haryana High Court in **L. Shiv Dayal Kapoor &ors vs. Union of India AIR 1963 P H 538** observed that: *16...may now consider the implications of the rule underlying the doctrine of privity of contract, which means the relationship subsisting between two contracting parties. "Privity" in this context implies a mutuality of will and is an interaction of parties and their successors. It creates a legal bond or tie or vinculum juris. The rule of privity of contract is that no one but the parties to a contract can be bound by it or entitled finder it. In the words of Pollock, "A third person cannot become entitled by the*



*contract itself to demand performance of any duty under the contract,".*

- XII. That the respondent has continuously pressed for taking incomplete possession of the unit by addressing letters for offer of possession. That the respondent's malafide conduct is evident from the contradictory clauses made in one such letter dated 16.07.2021 where in point no. 4, it is mentioned that the respondent has handed over the affairs and management of the common areas and facilities along with all assets in the project to the Primanti Residents Welfare Association (PPRWA), however, on the other hand, it is mentioned in point 14 of the same letter that the complainant agrees to sign all papers, documents, forms etc as may be necessary for the unit and for the purpose of RWA formation and for application of membership to the proposed society. It is clear from afore-mentioned points that the complainant had to sign all papers and documents for formation of RWA but the respondent had already formed the RWA in the name of "Primanti Residents Welfare Association". This act of the respondent highlights its arbitrary conduct with respect to formation of RWA.
- XIII. That the complainant has till date does not receive the complete possession of the unit due to which the respondent stands in a continuous default of the application form and the Act.



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

4. The complainant has sought following relief:
- i. To direct the respondent to handover the possession of the unit in habitable condition along with delayed possession charges at the prescribed rate of interest.
  - ii. To direct the respondent not to charge arbitrary holding charges and maintenance charges.
  - iii. To hold that the maintenance charges cannot be charged before the delivery of actual physical possession.
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 filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds: -
- i. The complaint filed by the complainant is not maintainable and the Haryana Real Estate Regulatory Authority, Gurugram, Haryana has no jurisdiction whatsoever to entertain the present complaint. According to the respondent, the jurisdiction to entertain the complaints pertaining to refund, possession, compensation, and interest i.e., prescribed under sections 12, 14,

18 and section 19 of the Act lies with the adjudicating officer under sections 31 and 71 read with rule 29 of the rules.

- ii. In the present case, 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 possession, interest and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e., "Primanti Phase-2", Sector-72, Gurgaon is covered under the definition of "ongoing projects" and registered with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before this authority under rule 28 as this authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- iii. That now, in terms of the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 (hereinafter referred to as the "said amendment rules"), the complainant has filed the present complaint under the amended rule-28 (but not in the amended 'Form CRA') and is seeking the relief of possession, interest and compensation u/s 18 of the said Act. It is pertinent to mention here that as the present complaint is not in the Amended 'Form CRA', therefore the present complaint is required to be rejected.

- iv. That without prejudice to the above, it is most respectfully submitted that the power of the appropriate Government to make rules u/s 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. The powers of the adjudicating officer to adjudicate the complaint pertaining to refund, possession, compensation and interest for a grievance under section 12, 14, 18 and 19 are vested with it under section 71 read with section 31 of the said Act and not under the said rules and neither the said rules nor any amendment thereof can dilute, nullify or supersede the powers of the adjudicating officer, vested with it under section 71 read with section 31 of the said Act, and hence the authority has no jurisdiction whatsoever to entertain the present complaint.
- v. That without prejudice to the above, the above stated position is further substantiated by section 84(2)(zc), which clearly states that it is only the manner of inquiry under section 71(1) for which a rule can be made by the appropriate Government and not by whom that inquiry is to be made as that is clearly provided in section 71 i.e. adjudicating officer.
- vi. That it is also submitted that the complaint is neither supported by any signed verification of the complainant nor supported by any proper attested affidavit with a proper verification. In the

absence of a proper verified complaint with a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.

- vii. That statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is investor and not consumer and nowhere in the present complaint have the complainants pleaded as to how the complainant is consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant, who are already the owner and resident of plot no. 670, Sector-15, part -II, Gurugram- 122001 (address mentioned in the booking application form) and also A-301, Caitriona Ambience Island, behind Ambience Mall, Gurugram- 122001 (address mentioned in the affidavit of the present complaint) is investor, who never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds.



- viii. That this authority has no jurisdiction to entertain the present complaint as the complainant has not come to this authority with clean hands and have concealed the material fact that the complainant is defaulters, having deliberately failed to execute the apartment buyer agreement and make the payment of installments within the time prescribed, as mentioned in the notice of possession dated 19.03.2018, and subsequent reminders dated 22.05.2019, 19.02.2020, 01.06.2020, 30.01.2021 and 16.07.2021, which resulted in outstanding dues towards maintenance charges, holding charges and delay payment charges, as reflected in the notice of possession and also in the current statement of account dated 24.09.2021. In addition to the above, the complainant is also liable to pay the stamp duty, registration, and other ancillary charges, as reflected in the statement of account sent with the notice of possession.
- ix. That from the date of booking till the date of offer of possession i.e. 19.03.2018, the complainant has never ever raised any issue whatsoever and have now concocted a false story and raised false and frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainants clearly indicates that the complainant is mere speculator having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainant has

filed the present complaint on false, frivolous and concocted grounds.

- x. Despite several adversities and hurdles, the respondent continued with the construction of the project and even though as per the RERA registration certificate, the due date of completion is 30.06.2020, however, the occupation certificate for the apartment in question has already been obtained on 09.03.2018, which was duly communicated to the complainant vide email dated 09.03.2018, and the possession has already been offered vide notice of possession dated 19.03.2018. However, as the complainants were only short term and speculative investors, therefore they were not interested in taking over the possession of the said apartment. It is pertinent to mention here that even one year after the offer of possession, the complainant did not come forward for taking over the possession and, vide email dated 20.04.2019, requested for transfer/sale of their apartment to a company by the name of Jay Switches (India) Pvt. Ltd. by stating that, ***“Mr. Kunal Minda wants to transfer his flat to M/s Jay Seitches (India) Pvt. Ltd., Plot No. 407, Udyog Vihar, Ph-3, Gurgaon in which Mr. Kunal Minda is director and major shareholder. We request you kindly send us required documents for this internal transfer and also inform convenient date for documentation for this internal transfer.”*** After pursuing the sale/transfer for approx. 2 months, the



complainant once again changed their mind and vide email dated 08.06.2019 stated that, ***"Please ignore our all communication regarding transfer of flat to company Jay Switches (India) Pvt. Ltd. Mr. Kunal Minda will remain sole owner of flat."*** It is apparent that the complainant had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession and because of slump in the real estate market, the complainant has developed an intention to raise false and frivolous issues to engage the respondents in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainant has origin and motive in sluggish real estate market.

- xi. That this 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 signed by the complainant/allottee offered to him. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said rules, has been executed between the complainant and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the booking application form dated 29.03.2013 read with allotment letter dated 31.03.2013, executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for interest and compensation,





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

- xii. That the respondent has made huge investments in obtaining approvals and even though as per the RERA registration certificate, the due date of completion is 30.06.2020, however, the occupation certificate for the apartment in question has already been obtained on 09.03.2018, which was duly communicated to the complainant vide email dated 09.03.2018, and the possession has already been offered vide notice of possession dated 19.03.2018. The complainant persuaded the respondent to allot the said apartment in question to them with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainant prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainant.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

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

**E.II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

*The provision of delayed possession charges is part of the application form, as per clause 7(b) of the application form dated 04.09.2010. Accordingly, the promoter is responsible for all*



*obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter 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 entitlement of DPC on ground of complainant being investor**

10. The respondent has taken a stand that the complainant is the investor and not consumers, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the



promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer and they have paid total price of Rs.3,22,94,009.57/- 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 apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.** has also held that the concept of investor is not defined or



referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

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

11. 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."*

12. 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."*

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are



in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

**G.I To direct the respondent to handover the possession of the unit in habitable condition along with delayed possession charges at the prescribed rate of interest.**

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

***"Section 18: - Return of amount and compensation***

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

.....

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

15. Clause 7(b) of the application form provides for handing over of possession and is reproduced below:

**"7(b). Possession Time and Compensation**

*TATA HOUSING shall endeavour to give possession of the Apartment/ Executive Apartment/ Executive Floor /Villa to the Allottee(s) on or before-----but subject to force majeure circumstances and reasons beyond the control of TATA HOUSING. If TATA HOUSING fails to give possession of the Apartment/ Executive Apartment/ Executive Floor /Villa on or before September 2017 then TATA HOUSING shall pat to the Allottee(s) compensation as under:*

- (I). Compensation @ Rs. 5/- per sq. ft. per month for the Apartment/ Executive Apartment.*



*(II). Compensation @ Rs. 8/-per sq. ft. per month for the Executive Floor/Villa.*

*The compensation shall be excluded on the basis of the saleable area more particularly to be mentioned in this agreement to be executed.*

*Similarly if the allottee(s) fail to take possession within Thirty(30) days from the date of intimation in writing by TATA HOUSING, then the Allottee(s) shall be liable to pay holding charges to TATA HOUSING as per the rates mentioned in 7B (I) and (II) respectively for the entire period of such delay."*

16. The authority has gone through the possession clause of the agreement and observed that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, providing necessary infrastructure in the sector by the Government but subject to force majeure circumstances and the reason beyond the control of the respondent. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:





*Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 25.11.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

20. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*



(ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made by both the parties, 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 7(b) of the application form executed between the parties on 29.03.2013, possession of the booked unit was to be delivered within stipulated time i.e., by September 2017. Occupation certificate was received by the respondent on 09.03.2018 and the offer of possession of the subject unit was offered to the complainant on 19.03.2018. 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 application form dated 29.03.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the application form cum



buyer's agreement dated 29.03.2013 to hand over the possession within the stipulated period.

23. 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 09.03.2018. The respondent offered the possession of the unit in question to the complainant on 19.03.2018, 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 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they had 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. 30.09.2017 till the expiry of 2 months from the date of offer of possession (19.03.2018) which comes out to be 19.05.2018.

24. 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 delayed possession



at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 30.09.2017 till 19.05.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**G.II To direct the respondent not to charge arbitrary holding charges and maintenance charges.**

25. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the application form at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year, the unit in question is incomplete as admitted by the respondent and the question of maintenance of the same cannot arise.

**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 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 30.09.2017 till 19.05.2018 i.e. expiry of 2 months from the date of offer of possession (19.03.2018). 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 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 is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainant /allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 25.11.2021**

Judgement uploaded on 17.12.2021