

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

Complaint no. : 4173 of 2021  
First date of hearing: 10.12.2021  
Date of decision : 15.02.2022

1. Mr. Udit Mittal  
2. Mr. Aditya Mittal  
Both RR/o: - F-26, Hauz Khas Enclave, Hauz Khas,  
New Delhi- 110016

**Complainants****Versus**

1. M/s Ramprashtha Promoters and Developers  
Private Limited.  
2. M/s Ramprashtha Estate Private Limited  
Both having Corporate Office at: - C-10, C- Block  
Market, Vasant Vihar, New Delhi- 110057  
Also, at: - Plot no. 114, Sector- 44, Gurugram- 122002

**Respondents****CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member****APPEARANCE:**

Sh. Nilotpal Shyam  
Ms. R Gayatri Manasa

Advocate for the complainants  
Advocate for the respondents

**ORDER**

1. The present complaint dated 02.11.2021 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-37C & 37D, Gurugram.
2.	Project area	105.402 acres
3.	Nature of the project	Residential colony
4.	DTCP license no. and validity status	128 of 2012 dated 28.12.2012 valid till 27.12.2016
5.	Name of licensee	B.S.Y. Developers Pvt. Ltd. and 35 others
6.	RERA registered/not registered	<b>Not registered</b>
7.	Unit no.	Plot no. E-109, Block- E [Page 35 of complaint]
8.	Unit measuring	300 sq. yds.
9.	Date of allotment letter	22.04.2017 [Page no. 26 of complaint]
10.	Date of execution of plot buyer's agreement	07.06.2017 [Page no. 32 of complaint]
11.	Date of welcome letter	22.04.2017 [Page no. 25 of complaint]
12.	Payment plan	Possession linked payment plan. [Page no. 48 of complaint]
13.	Total consideration	Rs.76,80,000/-



		[as per payment plan page no. 48 of complaint]
14.	Total amount paid by the complainants	Rs.50,40,000/- [as per receipt information page no. 51 to 54 of complaint]
15.	Due date of delivery of possession as per clause 1 of the plot buyer agreement: 30 months from the date of execution of agreement [Page no. 39 of complaint]	07.12.2019
16.	Delay in handing over possession till date of this order i.e., 15.02.2022	2 years 2 months and 8 days

### B. Facts of the complaint

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

- I. That the complainants are respected citizen of India and respondents' company through their representatives had approached the complainants and represented that the respondent company township project name "**Ramprastha city**" situated at sector-37C & 37D, Gurugram, Haryana (hereinafter referred to as "**said project**") will effectively serve the purpose of complainants as it has best of the amenities.
- II. That the respondents company claimed that one of their group company i.e. M/s Ramprastha States Pvt Ltd has obtained permission for the development of the project land vide license no. 128 of 2012 dated 28.12.2012 from the Director General, Town & Country Planning, Haryana (DGTCP). The respondents have further claimed that they have entered in



arrangement/collaboration with the landowners to develop, market and sale plots in said project.

- III. That pursuant to the booking, the respondent no. 1 issued allotment letter dated 22.04.2017 wherein the total consideration for the said plot bearing no. E-109 admeasuring 300 sq. yards (approx.) in the project namely "Ramprastha City" located at Sector-37C and 37D, Gurugram (hereinafter referred to as "said plot") was fixed as Rs.76,80,000/-.
- IV. That both the parties entered into agreement i.e., plot buyer's agreement (hereinafter referred to as "**PBA**") dated 07.06.2017 for the sale of said plot no. E-109 admeasuring 300 sq. yards (approx.) in Ramprastha City project located at Sector-37C and 37D, Gurugram. Further, as per PBA, the respondent company agreed to sell/ convey/ transfer the said plot E-108, for an amount of Rs. 76,80,000/- which includes basic sale price, development charges, Government charges, preferential location charges and interest free maintenance charges plus applicable taxes. The complainants have already paid a sum of Rs.50,40,000/- towards the sale consideration in respect of the said plot.
- V. That the buyer's agreement is a standard form of agreement which is biased, one sided, amounting to unfair trade practice as the complainants were compelled to sign on dotted lines in view of one-sided standard form of contract i.e., PBA. Therefore, it is not binding on the complainants in view of the Judgment of Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure*



***Ltd. V. Geetu Gidwani Verma and Anr. CA No. 1677 of 2019 judgment dated 4/02/2019*** wherein the Hon'ble Apex Court.

- VI. That the buyer's agreement signed between both the parties is a standard form of contract which was signed by every other allottees wherein there was no option to the complainants but to sign on the dotted lines on a contract which was framed by the builder with no room for any negotiation whatsoever. The complainants crave leave of authority to rely on specific clauses of the plot buyer's agreement to substantiate it further at the time of oral hearing.
- VII. That as per clause 11 of the buyer's agreement, the possession date for the impugned plot E-109 was agreed to be **07.12.2019**, with grace period of 6 months for applying and obtaining the occupancy certificate. Further, clause 12 of said agreement also stipulates that construction of said plot shall be completed within five (5) years from the date of possession by them to the complainants. Sub clause (a) further stipulates that a penalty @ 718 per sq. yard per month on the full area of the said plot for the entire period of construction delay made by the complainant. The buyer's agreement further stipulates under clause 11(c) and clause 10 that respondent company, if failed to deliver the possession of the impugned plot within 30 months from the date of execution of the buyer's agreement by them (it may further extended to grace period of 6 months) subject to complainants having made all payments as per payment plan and subject to terms and conditions of the buyer's agreement and barring force



*majeure* conditions shall pay compensation @ 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 damages and that the complainants may suffer and the shall not have any other claims or rights whatsoever.

VIII. Furthermore, it is stipulated that such adjustment of compensation shall be done at the time of execution of conveyance deed. In other words, the respondent company shall be liable to pay damages for delay in possession after 30 months from the date of execution of plot buyer's agreement upon agreement of both the parties and upon execution of conveyance deed. The said compensation clause is *ex facie* discriminatory in comparison to clause 11(c) of the buyer's agreement and amounts to unfair trade practices in view of catena of judgments of Hon'ble National Consumer Disputes Redressal Commission. Further, the said compensation clause is also in direct conflict with the Act, 2016 and rules made there -under

IX. That the complainants have paid more than 80% of the total sale consideration wherein all the demand made by them till date was honored by the complainants. Despite the said payments, the respondent company failed to deliver the possession in agreed timeframe (i.e., 07.12.2019) for reasons best known to them and the respondent company never bothered to intimate rhymes and reasoning for the delay to the complainants. Even, the grace time period (i.e., 07.06.2020) has long ago been breached by the

respondents. Therefore, the respondents have breached the sanctity of the plot buyer agreement.

- X. That the respondents have failed to honor the said date of completion of project and subsequently handing over the possession as stated in the agreement. The respondent company have not applied for occupancy certificate of impugned tower till today. Therefore, the respondent company seems to be a continuous and recurring defaulter and is in the habit of making false claims to dupe the hard-earned money of homebuyers like the complainants.
- XI. That the respondents vide letter dated 22.04.2017 confirmed the purchase and allotment of the said plot in favour of the complaint. It is a matter of record that no occupation certificate has been granted to them till date with regard to the said plot.
- XII. That the respondents is an continuous and recurring defaulter, and no respite is available against such a recurring either on justiciable or equitable ground. Any further extension to them will amount to travesty of justice as respondent company actions seems to take in bad faith and with ill motive to misappropriate complainants hard earned money.
- XIII. That there is almost 2 years of unexplained and inordinate delay in handing over the possession by them to the complainants and therefore a fit case wherein the authority shall order for granting possession immediately along with the interest for unreasonable delay at the prescribed rate in view of the mandatory obligation as provided under section 18 of the Act, 2016 as well as on



account of the acrimony of respondent company wherein they obliterated the trust reposed on them by complainants by handing over their hard earned money always on time and in accordance with the agreement.

4. 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 respondents**

5. The respondents have contested the complaint on the following grounds: -

- I. That the present complaint is not maintainable, 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 had approached the respondent in the year 2013 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in sector 37C and 37D, Gurugram. The complainants being fully 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. That thereafter, in 2013, the complainants have paid a booking amount of Rs.30,00,000/- through two cheques bearing nos. 078792 and 262288 drawn on ICICI Bank towards booking of the said project pursuant to which a receipt bearing no. RPDPL/072 dated 29.09.2013 was issued to the complainants. Thereafter, in the year 2017, the respondent no. 1 has issued a welcome letter and provisional allotment letter dated 22.04.2017 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 07.06.2017 wherein provisionally a plot namely E-109 admeasuring 300 sq. yards in Ramprastha City was allotted to the complainants.

- III. It is submitted that from the date of booking till the date of filing of the present complaint, the complainants have 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 complainants clearly indicates that the complainants are a mere speculative investor having invested with a view to earn quick profit and due to unprecedented slowdown in the real estate market conditions, is hereby intending to make profit out of the miserable condition of the respondent.



- IV. That, without prejudice to the above, it is submitted that despite the wrath of real estate market conditions and crippling adversities faced, the respondent has continued to complete the development of the said project and will positively be able to handover possession at the soonest.
- V. That the complainants have resorted to filing a complaint solely on the basis of false claims and baseless accusations against them while concealing its own defaults and laches for which the complainants are solely liable.
- VI. That the complainants have maliciously alleged that they have paid almost full consideration towards the booking of the plot in the futuristic project of them, while in reality they have only paid an amount of Rs.50,40,000/- 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 2013 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.
- VII. That no date of possession has ever been mutually agreed between the parties. It is submitted that as per averments made by complainants, the petitioners have claimed interest from the year 2013 which also shows that the amount claimed by the complainants have hopelessly barred by limitation. Further, the claims for possession are superfluous and non-est in view of the fact that the complainants are actually not even entitled to claim



possession of the plot as on date. It is submitted that it is only on default in offer/handover of possession that the complainants right to claim possession/refund crystalizes.

- VIII. That the complainants have attempted to create a right in their favour by resorting to terminate transactions which have become hopelessly barred by time and after the period of limitation has lapsed it cannot be revived. Further that the complainants were never interested in fulfilling the necessary formalities towards booking of the said plots. Neither the complainants have made any further payment for plot as such in "Ramprastha city" nor did they submit any application for the same. It is apparent that the complainants never turned up for the completion of the formalities.
- IX. That without prejudice to the above, it is further submitted that the complainants are not "Consumers" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainants were to make investment in a futuristic project of them 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.
- X. That 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 and the complainants have no intention of using the said plot for their personal residence or



the residence of any of their family members and if the complainants had such intentions, they would not have invested in a project in which there was no certainty of the date of possession. The sole purpose of the 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 complainants have cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. That it is submitted that the complainants having purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said futuristic undecided plot and therefore, the present complaint being not maintainable and must be dismissed in limine.

- XI. That the complainants have intentionally, not filed their personal declarations with respect to the properties owned and/or bought/sold by them at the time of booking the impugned plot and/or during the intervening period till the date of filing of the complaint and hence an adverse inference ought to be drawn against the complainants.
- XII. That the complainants have approached the respondents' office in July 2013 and have communicated that the complainants were interested in a project which is "not ready to move" and expressed their interest in a *futuristic project*. It is submitted that the complainants were not interested in any of the ready to move in/near completion projects. 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. It is submitted 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 them. 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 complainants 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.

- XIII. That, accordingly, a provisional allotment letter was issued by the respondent vide letter dated 22.04.2017 confirming a provisional allotment of tentative plot no. E-109 admeasuring 300 sq. yards in the future potential project. However, it was clear since the beginning that the said plot shall be allotted only after the approval of license and zoning plans, which was although



expected shortly but there was no definite date and in any case approval of such plans were not foreseeable at the time the complainants had made the payments in 2013.

- XIV. That on the date of provisional allotment of the plot even the sectoral location of the plot was not allocated by them. The said plot at the date of booking/provisional allotment was nothing more than a futuristic project undertaken to be developed by the respondent 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 complainants 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. The complainants therefore only invested in the said plot so that the same can be used to derive commercial benefits/gains.
- XV. That therefore the complainants cannot be said to be genuine consumers by any standards; rather the complainants are mere investors in the futuristic project. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.
- XVI. That the complainants have knocked at the doors of this Hon'ble Commission for recovery of their investments under the disguise of a "genuine Consumer". That bare reading of the 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 in a futuristic project. The complaint is a malafide attempt by the complainants to abuse the forum of this authority for recovery of their investments.

- XVII. That the complaint has been filed by the complainants before this 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 in this behalf, it is most respectfully submitted that this authority is precluded from entertaining the present matter due to lack of cause of action and lack of jurisdiction of this authority.
- XVIII. That the Haryana Real Estate (Regulation and Development) 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.
- XIX. That further, the High Court of Punjab and Haryana, vide an Order dated 16.10.2020 in *Experion Developers Pvt Ltd Vs State of Haryana and Ors*, CWP 38144 of 2018 and batch, has observed as hereunder when a question was raised before the said Hon'ble High Court pertaining to the jurisdiction of the authority and the adjudicating officer with respect to the Haryana Amendment Rules, 2019,



- XX. That, further, another aspect which needs attention herein is that when it comes to the part of compensation or compensation in the form of interest, the adjudicating officer shall be the sole authority to decide upon the question of the quantum of compensation to be granted. In this regard, the main excerpts of Rule 29 of the Haryana Amendment Rules, 2019.
- XXI. That in this context, the judgment of the Punjab and Haryana High Court dated 16.10.2020 in *Experion Developers Pvt Ltd (Supra)*, may be referred herein.
- XXII. 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 final order in the same is still pending. It is submitted that the question of jurisdiction may kindly be deferred till the matter is finally decided by the Hon'ble Supreme Court. Therefore, in view of the stay ordered by the Hon'ble Supreme Court, in any case, these matters require an erstwhile stay keeping in view the directions of the Supreme Court. In this aspect, the jurisdiction of the authority be subject to the final verdict of the Hon'ble Supreme Court.
- XXIII. 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.

XXIV. 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, this authority has no jurisdiction in any manner to adjudicate upon the present complaint.

XXV. Statement of objects and reasons as well as the preamble of the said Act categorically specify the objective behind enacting the said Act to be for the purpose of protecting the interests of consumers in the real estate sector. However, the complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the Act of 2016. The complainant is only an investor in the present project who has purchased the present property for the purposes of investments/commercial gain. The complaint is a desperate



attempt of the complainant to harass the respondents and to harm the reputation of the respondents.

- XXVI. That since the Act of 2016 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 the complainant does not fall within the walls of the term "Consumer". That further the complainants are a mere investor who has invested in the project for commercial purposes.
- XXVII. 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 complainants have deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf, the authority may strictly direct the complainants to adduce any documentary evidence in support of their averments.
- XXVIII. That the complainants are already in ownership of one property which the complainants have materially concealed. Hence, by any standard of imagination, the complainants cannot to be said to have purchased the present property for personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or gain, hence, the



complainants are plainly investors who have filed the complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, the complainants cannot be said to have approached this authority with clean hands and have approached this authority only with malafide intention to harass the respondents in the most harm causing way possible.

- XXIX. That the complainants are not entitled to claim possession as claimed by the complainants in the complaint is clearly time barred. The complainants themselves have not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited by the respondent 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 herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainants had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicions that the complaint is only made with an intention to arm twist the respondent. The entire intention of the



complainants is made crystal clear with the complaint and concretizes 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.

- XXX. It is evident from the complaint that the complainants were actually waiting for the passage of several years to pounce upon the respondent and drag the respondents in unnecessary legal proceedings. It is submitted that huge costs must be levied on the complainants for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent.
- XXXI. That the respondents had to bear with the losses and extra costs owing due delay of payment of developmental charges, Government 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 respondents 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.
- XXXII. That the complainants have been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondents 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.

XXXIII. That the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainants had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of this authority and in further view of the fact the complainants had knowingly made an investment in a future potential project. 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.

XXXIV. That the complainant's 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 complainants were obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainants had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated July, 2008 was made by the complainants towards a *future potential project* of the



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

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

XXXVI. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to them 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. Hence the complaint is liable to be dismissed on this ground as well.

XXXVII. That 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 complainants. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural plot of the respondent.

XXXVIII. 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

6. 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 respondents have raised a preliminary submissions/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondents 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.1 Territorial jurisdiction**

7. 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**

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)**

##### **Section 11**

.....

*(4) The promoter shall-*

*(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;*

##### **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.*

8. 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 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**



9. The respondents have 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.50,40,000/- 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**

10. The counsel for the respondents have 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.



11. 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.
12. 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: —.....*

*(I): -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...."*

13. 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)(I)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the 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.1 Direct the respondents to pay interest at the prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the PBA till the actual date of handing over the possession of the impugned unit.



14. 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."*

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

**"11. SCHEDULE FOR POSSESSION**

*"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.*

(a) .....

(b) .....

(c) ***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."*



16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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.
17. **Due date of handing over possession and admissibility of grace period:** - The respondents have 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



07.06.2017 which comes out to be 07.06.2020 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 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.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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.*



19. 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.
20. 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., 15.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
21. 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:
- "(z) "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;"*
22. 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.

**G. II Direct the respondents to give a firm commitment with regard to actual date handing over of possession.**

**G.III Direct the respondents to possession of impugned plot no. E-109, Ramprastha City, Sector- 37C and 37D Gurugram to the complainants by revoking illegal demands;**

23. There is nothing on the record to show that the respondents have applied for CC/part CC or what is the status of the development of the above-mentioned project. So, in such a situation no direction can be given to the respondent to handover the possession of the subject unit, as the possession cannot be offered till the CC/part CC for the subject plot has been obtained. However, delay possession charges as ascertained by the authority shall be payable to the complainants as per provisions of the Act. Further, the respondents have not raised any illegal demand. It is mere contingency that the respondent may or may not raise demand in regard to escalation and hidden charges of subject unit. Therefore, the complainants are advised to approach the authority as and when cause of action arises. Further, the respondents shall not charge anything from the complainants which is not the part of the buyer's agreement.

**G. IV Direct the respondent company to pay a cost of Rs.1,00,000/- towards the cost of litigation.**

24. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.*



(Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainant is advised to approach the adjudicating officer for seeking compensation and the complainant is at liberty to approach the adjudicating officer for seeking compensation.

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the agreement executed between the parties on 07.06.2017, 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 07.12.2019. 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 07.12.2019. The respondents have failed to handover possession of the subject plot till date of this order. Accordingly, it is the failure of the respondents/promoters to fulfil their 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 respondents is established. As such the allottees shall be paid, by the promoters, interest for every month of delay from due date of possession i.e., 07.12.2019 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.

#### **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 respondents are 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., 07.12.2019 till the date of handing over possession after obtaining the receipt of completion certificate/part completion certificate from the competent authority,
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The arrears of such interest accrued from 07.12.2019 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoters to




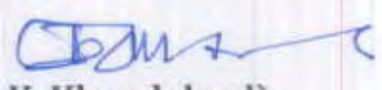
the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

- iv. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which are the same rate of interest which the promoters 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.
- v. The respondents shall not charge anything from the complainants which is not the part of the agreement.

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: 15.02.2022

Judgement uploaded on 16.03.2022