

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

Complaint no. : 4286 of 2021
First date of hearing: 10.12.2021
Date of decision : 15.02.2022

1 Mr. Davinder Kumar
2 Mrs. Nishu Rattan
Both RR/o: - Flat No. 202, 2nd Floor, Tower-F, The
Atrium, Sector- 37D, Gurugram, Haryana-
122001

Complainants

Versus

M/s Ramprashtha Promoters and
Developers Private Limited.
Regd. office: - 114, Sector- 44, Gurugram-
122003, Haryana

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Jagdeep Sheoran
Ms. R. Gayatri Manasa

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 03.11.2021 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 allottees 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	"The Atrium Tower", Sector-37D, Gurugram.
2.	Project area	60.5112 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid till 18.02.2020
5.	Name of licensee	M/s Ramprastha Builders Private Limited and 13 others as mentioned in licence no. 33 of 2008 issued by DTPC Haryana
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	202, 2 nd floor, tower F [Page no. 33 of complaint]
8.	Unit measuring	1185 sq. ft. [Super area]
9.	Date of execution of apartment buyer's agreement with first allottee	30.01.2010 [Page no. 18 of complaint]
10.	Date of allotment letter	29.10.2010 [page no. 15 of complaint]
11.	Date of execution of endorsement sheet	26.09.2015 (Page no. 67 of the complaint)
12.	Payment plan	Construction linked payment plan.



		[Page no. 58 of complaint]
13.	Total consideration	Rs.29,29,250/- [as per schedule of payment page no. 58 of complaint]
14.	Total amount paid by the complainants	Rs.34,01,856/- [as per receipt information page no. 74 of complaint]
15.	Due date of delivery of possession as per clause 15(a) of the apartment buyer agreement: 31.08.2012 plus 120 days grace period for applying and obtaining occupation certificate in group housing colony. [Page no. 43 of complaint]	31.08.2012 [Note: - 120 days grace period is not allowed]
16.	Occupation certificate	Not obtained
17.	Intimation regarding offer of possession	07.12.2017 (Page 38 of reply)
18.	Possession letter	11.03.2018 [page no. 40 of reply]
19.	Delay in handing over possession w.e.f. 26.09.2015 i.e., date of possession letter 11.03.2018	2 years 5 months and 13 days

B. Facts of the complaint

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

- I. That the respondent is a real estate development company incorporated under The Companies Act,1956, working in field of construction and development of residential as well as commercial projects across country in the name of Ramprastha Promoters & Developers Pvt. Ltd., respondent is subsidiary

company of Ramprastha group, with over 50 years of exposure in providing high-quality residential and commercial spaces, Ramprastha Group is one of the most recognized real estate and infrastructure development companies in the country today. Ramprastha constant endeavour is to provide exceptional value to its customers by creating premium homes at affordable prices. Primarily operating in Delhi-NCR, the Group has many acclaimed neighborhoods to its credit within the region. Working as real estate promoters & developers, Ramprastha have planned and developed numerous townships, plotted colonies and group housing that cater to varied customer demands.

- II. That the real estate project named "The Atrium", which is the subject matter of present complaint, is situated at Sector-37D, Gurugram, therefore, this authority do have the jurisdiction to try and decide the present complaint.
- III. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also



assured to the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

IV. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.

V. That Mr. Ashwini Kumar Shukla S/o Late Shyam Kishor Shukla & Mrs. Neelam Shukla W/o Mr. Ashwini Kumar Shukla R/o flat no 65, Sector 2, Pocket-1, Dwarka, New Delhi-75 was the original allottee (hereinafter referred to as the "Original Allottee"), who was allotted the flat no 202, 2nd Floor, Tower F, "The Atrium", Sector 37D, Gurugram, Haryana, having super built up area admeasuring 1185 Sq ft. in the project.

- VI. That the first allottee and respondent entered into a builder buyer's agreement on 30.01.2010 and subsequently the same was endorsed in favour of the complainants on 26.09.2015.
- VII. That the complainants purchased the said flat in the project from original allottee vide "Agreement to Sell" dated 15.09.2015 and endorsement on the buyer's agreement was subsequently made on 26.09.2015, thus stepping into the shoes of the original allottee.
- VIII. That the said unit was offered to the original allottee for a total sale consideration exclusive of taxes Rs. 29,29,250/- (Which includes the charges towards basic price, external development charges, infrastructure development charges, preferential location charges (whenever applicable) and exclusive right to use the dedicated car parking) hereinafter referred to as "Sale Consideration". The complainants made payment of the amount to original allottee as paid by him to respondent (original receipts endorsed in favor of complainants on 26.09.2015) and the rest amount was paid to the respondent as and when demanded.
- IX. That on 26.09.2015 the respondent issued an endorsement sheet in which respondent confirms that the transfer formalities having completed and accordingly now the captioned property stands in the name of complainants. respondent handover payment receipts and "buyer's agreement" along with



"endorsement sheet" to complainant. The complainants found buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral, and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainant, will cost him forfeiting of 10% of total consideration value of unit. When complainant opposed the unfair trade practices of respondent about the delay payment charges of 18%, they said this is standard rule of company and company will also compensate at the rate of Rs.5/- per sq. ft. per month in case of delay in possession of flat by company. The complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with complainant because if complainant stop the further payment of installments, then in that case respondent forfeit 10% of total consideration value from the total amount paid by complainant.

- X. That after the endorsement was made on the buyer's agreement in favour of the complainants, the complainants with bona-fide intentions continued to make payments on the basis of the demand raised by them. During the period starting from 26.09.2015, the date of endorsement on the buyer's agreement, the respondent raised demands of payments vide various demand letter which were positively and duly paid by

complainants. A total of more than Rs.34,01,856/- was paid. Thus, showing complete sincerity and interest in project and the said flat.

- XI. That as per clause 2(A)(i) of buyer's agreement the sales consideration exclusive of Rs.29,29,250/- (which includes the charges towards basic price, external development charges, infrastructure development charges, preferential location charges (whenever applicable) and exclusive right to use the dedicated car parking) but later at the time of possession respondent add Rs.3,11,810/- in sale consideration and increase sale consideration to Rs.32,41,060/- without any reason for the same, which is a unilateral and unfair trade practice. The complainants opposed the increase in sales consideration at time of possession, but respondent did not pay any attention to complainants.
- XII. That as per the clause - 15 of the said flat buyer's agreement dated 30.01.2010, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession on 31.08.2012 with a 120 days of grace period thereon.
- XIII. That the complainants have paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 11.10.2021, issued by the respondent, upon the request of the complainants, the complainants have



already paid Rs.34,01,856/- towards total sale consideration plus taxes as on today to them and now nothing is pending to be paid on the part of complainants. Although the respondent charges Rs.3,11,810/- extra from complainant on sales price without stating any reason for the same.

XIV. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyer's agreement, the complainants had approached the respondent and its officers for inquiring the status of delivery of possession, but none had bothered to provide any satisfactory answer to the complainants about the completion and delivery said flat. The complainants thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.

XV. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful, and fraudulent promises just to induce the complainants to buy the said flat basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented

falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants.

- XVI. That the offer of possession offered by respondent through "Intimation of Possession" was not a valid offer of possession because respondent was offered the possession on dated 09.01.2018 with stringent condition to pay certain amounts which are never be a part of agreement and as on 09.01.2018 project was delayed approx. five years and three months. At the time of offer of possession builder did not adjust the penalty for delay possession. In case of delay payment, builder charged the penalty @18% per annum and in delay in possession builder give Rs.5/- sq. ft. only, this is illegal, arbitrary, unilateral and discriminatory and above all respondents did not even adjust a single penny on account of delay in possession even after a delay of 5 years and 3 months. Respondent also demanded an Indemnity-cum-Undertaking along with final payment, which is illegal and unilateral demand. Respondent did not even allow complainants to visit the property at "The Atrium" before clearing the final demand raised by respondent along with the Offer of possession. Respondent demanded extra charges of Rs.1,43,999/- on account of electricity installations, water connection charges and electricity meter charges, Rs 54000/- on account of increase in area of staircase (45 sq. ft.) and the



respondent also demanded Rs.1,28,565/- for increase in super area (by 55 sq. ft.) from complainants which was never agreed under the buyer's agreement, which is an unfair trade practice. The complainants show his resistance to the respondent unfair trade practices about denying the claim of delay possession penalty, illegal demand of Indemnity-cum-Undertaking and also enquire the construction status of rest of project telephonically, but respondent does not want to answer any enquiry before getting complete payment against his final demand. The complainants protested against illegal demands and unfair trade practice of respondent and clearly mention to respondent that they will not to give any such Indemnity-cum-Undertaking, but after various rounds of failed meetings with respondent, and when respondent left no other option to complainant and keep on sending the emails for holding charges to complainant, which mount very high level of duress and coercion over complainant and under such compulsion and without free will complainant furnished the Indemnity-cum-undertaking as demanded by respondent and on 18.01.2018 made the payment of extra charges of Rs.1,43,999/-, Rs.54,000/- for extra staircase and Rs.1,28,565/- for increased super area for taking the possession of flat no. 202, 2nd floor, tower F, "The Atrium", Sector- 37D, Gurugram, Haryana. The respondent gives physical handover of

aforesaid property on date as 11.03.2018 after receiving all payments on 18.01.2018 from complainant.

- XVII. That the complainant communicated through telephonically on 11.03.2018 with the respondent to complain about the calculation of delay payment charges and inform them that respondent is creating anomaly by not compensating the complainant for delayed possession charges at the same rate of interest at which respondent charges for delay payments penalties. The complainant makes clear to respondent that, if respondent does not compensate the complainants at the same rate of interest, then complainant will approach the appropriate forum to get redress.
- XVIII. That the respondent holds the conveyance deed registration of flat till the month of September 2021, the respondent holds the registration of conveyance deed to mount pressure on the complainants that if complainants will make any complaint with any court, then respondent will cancel the unit, and only after taking indemnity cum undertaking from complainant, respondent completed the conveyance deed registration in September 2021.
- XIX. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainant on 31.08.2012, therefore, the tax which has come into existence after the due date of possession



(31.08.2012) of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if respondent had offered the possession of flat within the time stipulated in the builder buyer agreement.

- XX. That the respondent did not provide the final measurement of above said flat no 202, 2nd floor, Tower F, "The Atrium", sector 37D, Gurugram, Haryana. The respondent charges all IDC, and EDC and maintenance as per area of unit as 1285 sq. ft. but there is no architect confirmation provided by respondent about the final unit area which respondent will going to handover to complainant.
- XXI. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainants to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project. Respondent using sub-standard signage boards all over the flats and lobby area and other common area which made the project look more sub-standard.

XXII. That the cause of action accrued in favour of the complainants and against the respondent on 05.06.2009 when the said flat was booked by original allottee, and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay 18% interest on account of delay in offering possession on Rs.34,01,856/- paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession;
- ii. Direct the respondent to return Rs.1,43,999/- taken by the respondent under the head "other charges" on account of electricity installations, Water Connection Charges, and Electricity meter charges which is not mentioned under the buyer's agreement.
- iii. Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 16.10.2018.
- iv. Direct the respondent to return entire amount paid as VAT Tax by complainant between 01.04.2014 to 30.06.2017.
- v. Direct the respondent to get the flat measurement done by independent architect and furnish the report of actual size of flat to complainants and adjust the cost in accordance with actual size deliver to complainants.
- vi. Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.



- 5 On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

- 6 The respondent has contested the complaint on the following grounds. The submissions made therein, in brief are as under:

- I. That the present complaint has been filed by the complainants before this adjudicating officer inter alia praying for interest @18% p.a. as compensation against a unit bearing no. F-202, 2nd floor, admeasuring 1185 sq. ft. in "The Atrium" of the respondent along with interests in favour of complainant against the respondent.
- II. That the complaint has been filed by the complainant before this authority claiming for possession along with compensation against the investment made by the complainant in one of the apartments in the project "Ramprastha City". 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.
- III. That the said project is a "completed project" and in this regard, OC has already been received in the year 2018 itself. Further, the possession of the said flat has already been offered in the year 2018 itself, which the complainants have accepted.

- IV. That, therefore, once possession has already been accepted in 2018 itself. Once the possession has been accepted right of delay interest are waived off since the same have not been claimed when cause of action, if any, at all existed. That now the complainants have mischievously approached this authority with baseless claim for compensation along with other claims. Therefore, the present complaint is liable to be dismissed in limine.
- V. That the complainants have sought compensation in the form of an interest @18% p.a. along with other interest and not prescribed interest rate which comes within the purview of this authority. Therefore, this authority lacks jurisdiction to entertain the present matter at the same falls within the purview of the adjudicating officer.
- VI. 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 this authority.
- VII. 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 rules, 2019.

- VIII. That in this context, firstly, to file a complaint before this authority within rule 28, it is utmost crucial that *any violation or contravention of the provisions of the Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent* has been therefore alleged by the complainant. That in the present case, no such allegation has been made by the complainant which prima facie hints for a necessity for intervention of this authority. Therefore, the present case is liable to be dismissed before this authority for want of lack of cause of action and further, also the respondent cannot be held liable for an explanation when there is no such allegation of contravention.
- IX. 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.
- X. 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.
- XI. Therefore, the amendments have been upheld by the Hon'ble Punjab and Haryana High Court. That however when the same judgment dated 16.10.2020 was referred to the Hon'ble Supreme Court in *M/s Sana Realtors Private Limited & Ors Vs Union of*

India, the Hon'ble Supreme court vide an Order dated 25.11.2020 has stayed the Order dated 16.10.2020 until further orders. The hearings are being held on a day-to-day basis and the next date is 26.08.2021. It is submitted that the question of jurisdiction may kindly be deferred till the matter is finally decided by the Hon'ble Supreme Court. 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.

XII. That the complainant has 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.

XIII. That without prejudice to the above, it is further submitted that the complainant is not "Consumers" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainant was to make investment in a futuristic project of the respondent only to reap profits at a later stage when there is increase in the value of flat 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.

XIV. That the complainant having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project and the complainant has no intention of using the said flat for their personal residence or the residence of any of their family members and if the complainant had such intentions they would not have invested in futuristic project. The sole purpose of the complainant was to make profit from sale of the flat at a future date and now since the real estate market is seeing downfall, the complainant has cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. It is submitted that the complainant having purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyer of the said apartment and therefore, the complaint being not maintainable must be dismissed in limine.

XV. That the complainant has not intentionally 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 complainant.

XVI. That the complainant has approached the respondent office in 2010 and have communicated that the complainant was interested in a project which is "not ready to move" and expressed their interest in a futuristic project. It is submitted that the complainant was not interested in any of the ready to move in/near completion projects. It is submitted that on the specific request of the complainant, the investment was accepted towards a futuristic project. Now the complainant is trying to shift the burden on the respondent as the real estate market is facing rough weather.

XVII. Statement of objects and reasons as well as the preamble of the said Act clearly state that the Act is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. The Act, 2016 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 complaint. The complainant is investor and not consumer and nowhere in the present complaint have the complainant pleaded as to how the complainant is consumer as defined in the consumer Protection Act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant entered into an agreement with the respondent to purchase the said apartment. The complainant, who is already an owner of House no.328, Sector 27, Gurugram (address provided at



the time of booking application form) is an 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. It is most respectfully submitted that this authority has no jurisdiction howsoever to entertain the present complaint as the complainant has not come to this authority with clean hands and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose and the complainant is not being a 'consumers' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the Act, of 2016. This has been the consistent view of the National Consumer Disputes Redressal Commission.

XVIII. Therefore, the complainant cannot be said to be genuine consumer by any standards; rather the complainant is mere investor 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.

XIX. That the complainant has already been offered possession in 2018 itself which the complainants have duly accepted and agreement to sell has also been executed in this regard. However, the complainant with extraneous motives has intentionally approached this authority.

XX. That further, even all through these years, the complainants have never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years only hints at the mala-fide intentions of the complainant. Apparently, the complainant has been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property.

XXI. That If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainant cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottee at stake. If at all, the complainant had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of such a long time at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainant is made crystal clear with the present complaint and concretes the status of the complainant as an investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.



- XXII. That it is evident from the complaint that the complainant was actually waiting for the passage of several years to pounce upon the respondent and drag the respondent in unnecessary legal proceedings. It is submitted that huge costs must be levied on the complainant for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent.
- XXIII. That the respondent had to bear with the losses and extra costs owing due delay of payment of installments on the part of the complainant for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainant.
- XXIV. Further it is pertinent to mention herein that from the initial date of booking to the filing of the present complaint, the complainant has never raised any issues or objections. Had any valid issue been raised by complainant at an earlier date, the respondent would have, to its best, endeavored to solve such issues much earlier. However, now to the utter disappointment of the respondent, the

complainant has filed the present complaint based on fabricated story woven out of threads of malice and fallacy.

- XXV. That the complainant has been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondent into agreeing with the unreasonable demands of the complainant. The reality behind filing such complaint is that the complainant has 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 amounts invested along with profits in the form of exaggerated interest rates.
- XXVI. That this conduct of the complainant itself claims that the complainant is mere speculative investors who have invested in the property to earn quick profits and due to the falling & harsh real estate market conditions, the complainant is making a desperate attempt herein to quickly grab the possession along with high interests on the basis of concocted facts.
- XXVII. That further the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainant had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of consumer courts and in further view of the fact the complainant had knowingly made an investment in a



future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.

XXVIII. That even in such adversities and the unpredicted wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyers/allottees. That even in such harsh market conditions, the respondent has offered possession in 2018 which the complainant has duly accepted in the year 2018 itself.

XXIX. The below table shows the project name, its size, and the current status of the project. The respondent has been diligent in completing its entire project and shall be completing the remaining projects in phased manner. The respondent has completed major projects mentioned below and has been able to provide occupancy to the allottees.

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

XXX. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainant 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 unit. Hence the complaint is liable to be dismissed on this ground as well.

XXXI. That the delay has occurred only due to unforeseen circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the Plot for which respondent cannot be held accountable. However, the complainant despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondent with a wrongful intention to extract monies.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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) 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.

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 complainants at a later stage.



F. Findings on the objections raised by the respondent

F.1 Objection regarding entitlement of DPC on ground of complainants being investor

10. The respondent has taken a stand that the complainants are the investors and not consumers, 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 consumer of the real estate sector. The authority observes 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 complainants are buyers and they have paid total price of **Rs.34,01,856/-** to the promoter towards purchase of an apartment in its project. 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 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 investors 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.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay 18% interest on account of delay in offering possession on Rs.34,01,856/- paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession;

11. In the present complaint, the complainants intend 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."

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

"15. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31.08.2012 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

13. The authority has gone through the possession clause of the agreement and observes 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, commencement of construction, approval of building plan etc. 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.
14. 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.

15. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2012 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the



promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.

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

17. 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.
18. Taking the case from another angle, the complainants/allottees were entitled to the delayed possession charges/interest only at the rate of

Rs.5/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @18% per annum compounded at the time of every succeeding Installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

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., 15.02.2022 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(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

G.II Direct the respondent to return Rs.1,43,999/- taken by the respondent under the head "other charges" on account of electricity installations, Water Connection Charges, and Electricity meter charges which is not mentioned under the buyer's agreement.

22. The complainants have sought the relief that the respondent has not to charge electricity installation water connection charges, and electricity meter charges from the statement of account. The authority has observed that the said charges has been levied strictly in accordance with the terms and conditions of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

12. RIGHTS AND OBLIGATIONS OF THE ALLOTTEE(S)

(d). Electricity, Water, and sewerage Charges

(i). The electricity, water, and sewerage charges as applicable shall be borne and paid by the Allottee(s);

(ii). The Allottees undertakes to pay additionally to RAMPRASTHA on demand the actual cost of the Electricity, water and sewer consumption charges and/ or any other charges which may be payable in respect of the same apartment.

(iii). The Allottee undertakes that it shall not apply to Haryana Vidyut Prasaran Nigam Limited or any other electricity supply company in his individual capacity for receiving any additional load of electricity other than that being provided by the nominated maintenance agency."

23. The authority observed that the promoter would be entitled to recover the actual charges paid to the concerned departments' from the complainant /allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

G.III Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 16.10.2018.

G. IV. Direct the respondent to return entire amount paid as VAT Tax by complainant between 01.04.2014 to 30.06.2017.

24. **GST charges:** - The complainants have sought the relief that the respondent has not to charge GST charges from the statement of account. The authority has observed that the GST has been levied strictly in accordance with the terms and conditions of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -



"12(i) Taxes and levies

The allottee shall be responsible for payment of all taxes, levies, assessments, demands or charges including but not limited to sales tax, VAT, Service Tax, Central Sales Tax, Works Contract Tax, Education Cess, if applicable, levied or leviable in future on the schedule I Land, tower or Apartment or any part of the Complex in proportion to his/her/their/ its Super area of the Apartment."

25. As per the apartment buyer's agreement, taxes shall be payable as per the government rules as applicable from time to time. Taxes are levied as per government norms and rules and are leviable in respect of real estate projects as per the government policies from time to time. Therefore, there is no substance in the plea of the complainants in regard to the illegality of the levying of the said taxes.
26. The authority after hearing the parties at length is of the view that admittedly, the due date of possession of the unit was 31.08.2012. No doubt as per clause 15(a) of the apartment buyer's agreement, the complainant/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority, or any other government authority, but this liability shall be confined only up to the due date of possession i.e., 31.08.2012. The delay in delivery of possession is the default on the part of the respondent/promoter and that time the GST/CGST has not become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the respondent/promoter was not entitled to charge GST from the complainant/allottee as the liability of GST had

not become due up to the due date of possession as per the agreements.

27. **VAT charges:** - The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

G. V Direct the respondent to get the flat measurement done by independent architect and furnish the report of actual size of flat to complainants and adjust the cost in accordance with actual size deliver to complainants.

28. The above-mentioned relief sought by the complainant was not pressed by the complainant counsel during the arguments in the passage of hearing. The authority is of the view that the complainant counsel does not intended to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

G. VI Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.

29. The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the



complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the buyer's agreement executed between the parties on 30.01.2010, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.08.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. The complainant in the present complaint is a subsequent allottee and had purchased the apartment in question from the original allottee and thereafter, the respondent had acknowledged the same transaction vide endorsement letter dated 20.06.2015. In terms of the order passed by the authority in complaint titled as *Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)*, the complainants are entitled to delayed possession charges w.e.f. the date of endorsement letter dated 26.09.2015 i.e., date on which the complainants stepped into the shoes of the original allottee. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit to the complainants as per the terms and conditions of the buyer's

agreement dated 30.01.2010 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 30.01.2010 to hand over the possession of the subject plot within the stipulated time frame.

31. 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 complainants are entitled to delayed possession at prescribed rate of interest i.e., 9.30% p.a. from the date on which the complainants stepped into the shoes of the original allottee (date of endorsement letter) i.e., 26.09.2015 till the date of possession letter i.e., 11.03.2018 of the subject unit as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession (date of endorsement letter) i.e., 26.09.2015 till the possession letter i.e., 11.03.2018. 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
 - iii. The rate of interest chargeable from the allottees 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 delayed possession charges as per section 2(za) of the Act;
 - iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is debarred from claiming holding charges from the complainants /allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020
33. Complaint stands disposed of.
34. File be consigned to registry.

V.1-3
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.02.2022

Judgement uploaded on 16.03.2022