

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

Complaint no. : 4331 of 2021
First date of hearing: 10.12.2021
Date of decision : 15.02.2022

1. Mr. Afzal Khan
2. Mrs. Pratibha Khan
Both RR/o: - A-602, Prateel Edifice Sector- 107, Noida-
201304

Complainants

Versus

M/s Ramprashtha Promoters and Developers Private
Limited
Regd. Office at: - C-10, C- Block Market, Vasant Vihar,
New Delhi- 110057

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Siddhant Sharma
Ms. R Gayatri Manasa

Advocate for the complainants
Advocate for the respondent

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	Not registered
7.	Unit no.	Plot no. E-98, Block- E [Page 25 of complaint]
8.	Unit measuring	300 sq. yds.
9.	Date of allotment letter	02.08.2016 [Page no. 25 of complaint]
10.	Date of execution of agreement to sell	24.11.2015 [Page no. 20 of complaint]
11.	Date of welcome letter	02.08.2016 [Page no. 24 of complaint]
12.	Payment plan	Possession linked payment plan. [Page no. 26 of complaint]
13.	Total consideration	Rs.39,30,000/- [as per payment plan page no. 26 of complaint]



14.	Total amount paid by the complainants	Rs.34,50,000/- [As per submitted by complainant page no. 5 of the complaint and the same was admitted by the respondent in his reply]
15.	Due date of delivery of possession calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>	24.11.2018
16.	Delay in handing over possession till date of this order i.e., 15.02.2022	3 year 2 months and 22 days

B. Facts of the complaint

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

- I. That the complainants are co-owners of residential plot no. E-98 in "Ramprastha City" admeasuring 300 sq. ft. in Sector 37C-37D, Gurugram, Haryana. (hereinafter referred as the "said unit")
- II. That the total consideration for the said unit was decided as Rs.18,00,000/- respectively excluding development charges, Government charges and IFMS out of which Rs.18,00,000 was paid on 26.07.2008 and subsequently on 30.11.2015 the complainants vide separate cheques paid Rs.6,00,000/- and Rs.6,75,000/- and on 22.07.2016 further paid Rs.3,75,000/- and the remaining amount was payable on the issuance of the notice of offer for possession.
- III. That the receipt of the payments made by the complainants were duly acknowledged by them wherein, the respondents confirmed

that the complainants have booked a plot in the said project and that the said unit was allotted to the complainants.

- IV. That, both the parties executed the plot buyer agreement on 24.11.2015, which is after 7 years of making the entire BSP (Basic Sale Price) to the respondent. Wherein the respondent has acknowledged the fact that the payment to the respondent was made on 12.07.2008 for booking a plot in the said project admeasuring 300 sq. yards (plot) out of the total land in the project and respondent issued the receipt no. 1629 dated 26.07.2008 against the amount.
- V. That as a part of the commercial understanding between both the parties, the aforesaid plot buyer agreement provided that after the payment of Rs.18,00,000 against the plot, the amount paid by the complainants pursuant to the application, jointly constitutes the booking amount and earnest amount for the purpose of the application.
- VI. That, the respondent kept assuring the complainants that the possession of the plot would be handed over soon to the complainants as the complainants have made a payment of Rs.18,00,000/- (BSP) 7 years ago and the buyer's agreement was executed only on certain conditions and regular follow ups. However, for reasons best known to them, till date have not



handed over the possession of the plot to the complainants despite paying Rs. 34,50,000/-.

VII. That aggrieved with the conduct of them, the complainants sent multiple reminders to the respondent through emails between the month of April 2016 till January 2021, but the respondent failed to respond to the same and continued to disregard complainants request of handing over the physical possession of the plot.

VIII. Thus, owing to the above, the complainants have a legitimate expectation to receive the possession of the said plot along with compensation for delayed possession.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s)

- I. Direct the respondent to handover the possession of the plot no. E-98 to the complainants on completion in said project;
- II. Direct the respondent to pay the prescribed amount along with interest at 24% for delay in handing over the possession since 2008 to the respondent towards purchase of the said residential unit;
- III. Direct the respondent does not create any third-party interest in the said unit allotted to the complainants;
- IV. Direct the respondent to waive off any escalation cost, hidden charges which will be forcibly imposed on buyer at the time of possession as practice and practice used by builders to guise of a

biased arbitrary and one-sided drafting of the agreement with the malicious and fraudulent intent;

V. Pass any other order as this forum may deem fit and necessary in view of the above- mentioned facts in favour of complainant and against the respondent.

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

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds: -

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 2008 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 2008, the complainants have paid a booking amount of Rs.18,00,000/- through two cheques bearing nos. 335383; 847632 and 781181 drawn on Central Bank of India & UTI Bank towards booking of the said project pursuant to which a receipt bearing no. RPDPL/1629 dated 26.07.2008 was issued to the complainant. Thereafter, in the year 2016, the respondent has issued a welcome letter and provisional allotment letter dated 02.08.2016 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 24.11.2015 wherein provisionally a plot namely E-98 admeasuring 300 sq. yards in Ramprastha City was allotted to the complainant.

- 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 investors 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 further, 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.34,50,000/- 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 2008 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 2008 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 was 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 2008 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 02.08.2016 confirming a provisional allotment of tentative plot no. E-98 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 2008.

- 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 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.

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 complainant is 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 complainant in the complaint is clearly time barred. The complainants themselves have itself 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 are made crystal clear with the complaint and concretizes 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.

- XXX. 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.
- XXXI. That the respondent 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 respondent into agreeing with the unreasonable demands of the complainants. The reality behind filing such

complaint is that the complainants have resorted to such coercive measures due to the downtrend of the real estate market and by way of the present complaint, is only intending to extract the huge amounts in the form of exaggerated interest.

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 respondent has 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

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

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present



case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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.

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 respondents

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

10. The respondent has taken a stand that the complainants are the investor and not consumer, therefore they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the plot buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs.34,50,000/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or

otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the plot buyer's agreement executed between promoter and complainant, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

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

11. The counsel for the respondent has raised contention that the entitlement to claim possession or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.

12. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
13. Section 4(2)(1)(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)(1)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

*(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —
.....*

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”

14. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the

promoter in the declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.* and has observed as under:

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

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover the possession of the plot no. E-98, to the complainants on completion in the said projects.

15. There is nothing on the record to show that the respondent has 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 complainant as per provisions of the Act.

G.II Direct the respondent to pay the prescribed amount along with interest at 24% for delay in handing over the possession since 2008 to the respondent towards purchase of the said residential unit;

16. 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."

17. The respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project. The Hon'ble Bombay High Court in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. SCC Online Bom 9302* has held that "...Agreements entered into with individual purchasers were invariably one sided, standard-format

agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

18. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
19. The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**

20. In view of the above-mentioned reasoning, the date of signing of allotment letter, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 24.11.2018.
21. Therefore, the respondent is hereby directed to pay delay payment charges to complainant for the period, starts from due date of possession i.e., 24.11.2018 to till handing over of the actual possession.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 24% p.a. however, proviso to section 18 provides that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

23. 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.

24. 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%.
25. 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;"*

26. 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.III Direct the respondent not to create any third-party interest in the said unit allotted to the complainants.**
- G. IV Direct the respondent to waive off any escalation cost, hidden charges which will be forcibly imposed on buyer at the time of**

possession as practice and practice used by builders to guise of a biased arbitrary and one-sided drafting of the agreement with the malicious and fraudulent intent;

27. As on date, the cause of action has not arisen with regard to the aforesaid reliefs. Further the respondent is directed not to raise any demand with regard to unjustified and hidden charges. Therefore, the complainants are advised to approach the authority as and when cause of action arises. Further, the respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.* (12.03.2018 - SC); MANU/SC/0253/2018 observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. In view of the above-mentioned reasoning, the date of signing of allotment letter, ought to be


taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 24.11.2018. The respondent has failed to handover possession of the subject plot till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 24.11.2018 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

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

- i. The respondent is directed to pay interest at the prescribed rate i.e., 9.30% p.a. for every month of delay from the due date of possession i.e., 24.11.2018 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 24.11.2018 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 promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
 - iv. 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 are the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - v. The respondent shall not charge anything from the complainants which is not the part of the agreement.
30. Complaint stands disposed of.
31. 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