

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

Complaint no. : 4469 of 2021
First date of hearing: 10.12.2021
Date of decision : 15.02.2022

Mr. Avni Dogra

R/o: - House No: - 2234, Sector- C, Pocket- 2,
Vasant Kunj, New Delhi- 110070

Complainant

Versus

M/s Ramprashtha Promoters and
Developers Private Limited.

Regd. office: - Plot No.114,
Sector-44, Gurugram-122002.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Harshit Batra
Ms. R. Gayatri Mansa

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 12.11.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the

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

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 Edge 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 DTCP Haryana
6.	RERA Registered/ not registered	Registered vide no. 279 of 2017 dated 09.10.2017 (Tower No. A to G, N and O)
7.	RERA registration valid up to	31.12.2018
8.	Extension RERA registration	EXT/98/2019 dated 12.06.2019
9.	Extension RERA registration valid upto	31.12.2019
10.	Unit no.	P1501, 15 th floor, tower P [Page no. 20 of complaint]
11.	Unit measuring	1675 sq. ft. [Super area]
12.	Date of execution of apartment	23.09.2010



	buyer's agreement	[Page no. 17 of complaint]
13.	Date of allotment letter	29.10.2010 [Page no. 14 of complaint]
14.	Date of execution of tripartite agreement	20.10.2010 (Page no. 44 of the complaint)
15.	Payment plan	Possession linked payment plan. [Page no. 43 of complaint]
16.	Total consideration	Rs.54,88,723/- [as per schedule of payment page no. 43 of complaint]
17.	Total amount paid by the complainant	Rs.49,94,942/- [as per statement of account page no. 54 of complaint]
18.	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. 30 of complaint]	31.08.2012 [Note: - 120 days grace period is not allowed]
19.	Details of occupation certificate if any	Date of OC granted, if any, by the competent Authority: Dated 13.02.2020 Area/Tower for which OC obtained- O (nomenclature of tower- P) (Page 86 of reply)
20.	Offer of possession	19.02.2020 (Page 85 of reply)
21.	Delay in handing over possession w.e.f. 31.08.2012 (Due date of handing over possession) till 19.04.2020 i.e., date of offer of possession (19.02.2020) + 2 months	7 years 7 months and 19 days

B. Facts of the complaint

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

- I. That the complainant had booked a unit bearing no- 1501, Tower- "P", 15th floor, admeasuring 1675 sq. ft. super area in the project of the respondent company under the name and style of "The Edge Towers" (hereinafter referred to as the said "Project") at Sector 37- D, Gurugram, Haryana
- II. That the respondent is a company incorporated under The Companies Act, 1956 and having its registered office at C-10, Block-Market, Vasant Vihar, New Delhi-110057 and claims to be one of the leading real estate company.
- III. That the respondent is engaged in the construction and development of real estate projects and is responsible for the development of the project, hence, is a promoter under section 2(d) of the Act, 2016. Further, the said project came to the knowledge of the complainant, who is resident of New Delhi through the authorized representatives of the respondent company. The authorized representatives, for and on behalf of the respondent, made tall claims in regard to the said project and the respondent, lured the complainant into booking a unit in the project of the respondent.
- IV. That the complainant booked an apartment by believing on such false representation and claims at the pretext of the respondent



through its authorized representatives. The complainant booked an apartment in the said project and is hence allottees as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.

- V. That relying on the representations, warranties and assurances of the respondent about the timely delivery of possession, the allottee booked a unit in the project on 05.10.2010 and accordingly executed an apartment buyer's agreement on 23.09.2010 for the sale of the unit for a total sale consideration of Rs.54,88,723/- and paid an amount of Rs.8,23,328/- through cheque bearing number 007586 and 840732 dated 30.07.2010 and 28.10.2010 as per Clause 2(B) of the apartment buyer's agreement.
- VI. A tripartite agreement was also executed amongst complainant, the respondent, and the lender i.e., HDFC Ltd. on 20.10.2010. That an indemnity bond dated 29.10.2010 was also executed amongst complainant and the HDFC Ltd. Thereafter, with dream of owning a house which was advertised to be a progressive and aesthetic property, the complainant took a housing loan for Rs.45,62,056/- sanctioned on 30.10.2010 from Housing Development Finance Corporation Limited.
- VII. That the complainant had paid the total sum of Rs 49,94,942/- as per the statement of account out of total basic sale price of Rs.

44,72,250/- which is exclusive of EDC & IDC, IFMS, CMC with respect to the unit in question.

- VIII. That as per clause 15(a) of the agreement, the unit was to be delivered to the complainant by **31.08.2012**. Therefore, the date of handing over of possession as per this clause was on **31.08.2012**. However, even after more than 9 years 1 months of delay, the respondent has not handed over the possession of the unit, till date. The respondent has instead always been vague and ambiguous in the speaking about the status of development in the project. It must be noted that the project is still not in a position to be completed any time soon and the respondent has only delaying the construction by giving frivolous excuses.
- IX. Thereafter, the *malafide* conduct and unlawful activities of the respondent continued to be seen in its conduct as the delivery of the possession has been delayed by a very long period of almost 9 years and have consequently caused the complainant to go through mental agony and financial distress. Further, the respondent has failed to deliver the unit of the complainant even after more than 11 years of booking and taking advantage of dominant position and malafide intention had restored to unfair trade practices by harassing the complainant by way of delaying the project by diversion of the money from the innocent and gullible buyers.



- X. That the respondent being a world class developer had gotten the complainant into its trap because of its name, fame and projections done at the time of purchase, i.e., in the year 2010. The respondent has also made several vague promises to create big dreams in the mind of the complainant such as, "Timely Possession, Ease of Communication, 24*7 Services for resolution of problems, best in class club house, approachable markets with the society etc".
- XI. That the respondent has charged water connection charges from the complainant other than the internal development charges, but the definition of internal development works, which is given above clearly specifies that the water supply are also included in the internal development. If the complainant has already paid these charges, then it would be unjust for him to pay further charges under the head "water connection charges" despite there being a condition for payment of these charges in the builder buyer's agreement, the complainant should not be made or compelled to pay amount towards water connection charges.
- XII. That the respondent has utterly failed to fulfil his obligation to deliver the possession of the apartment in time and adhere to the contentions of the agreement which has caused mental agony, harassment, and huge losses to the complainant, hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to provide the complainant with prescribed rate of interest on delay in handing over of possession of the apartment on the amount paid by the complainant from the due date of possession as per the buyer's agreement till the actual date of possession of the apartment.
 - ii. Direct the respondent to remove the unlawful water supply connection charges and GST and CGST charges from statement of accounts.
 - iii. Direct the respondent to submit an affidavit stating the anticipated date of delivery of possession and hand over the possession of the apartment by such date
 - iv. Pass any such direction, as may be deemed fit, under section 37 & 38 of the Act, towards giving effect to any or more of the above sought relief.
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:
1. That the present complaint has been filed by the complainant before this adjudicating officer inter alia praying for direction to handover the possession of the apartment bearing no. P-1501, 15th



- floor, admeasuring 1675 sq. ft. in "*The Edge Towers*" 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 plots in the said project. 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 further no violation or contravention of the provisions of the Act, 2016 has been prima facie alleged by the complainant. That further in this behalf it is submitted that the occupation certificate has already been obtained by the respondent and the possession has been duly offered by the respondents in 2019 itself. However, it is the complainant who have despite several reminders on behalf of the respondent has miserably failed to approach the respondent to pay the balance amount and complete the documentation process. That the further there is no allegation of violation or contravention of the provisions of the Act. That the complaint is liable to be dismissed on this ground alone.
- IV. 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.

- V. 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 Rules, 2019.
- VI. 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.
- VII. 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.

- VIII. 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.
- IX. 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 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.
- X. 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.

- XI. 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.
- XII. 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 buyers of the said apartment and therefore, the complaint being not maintainable must be dismissed in limine.

- XIII. 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 complainants.
- XIV. That the complainant has approached the respondents 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.
- XV. 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.2234, Sector C, Pocket 2, Vasant Kunj, New Delhi (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.

- XVI. 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
- XVII. That the complainant has not approached this authority with clean hands and has concealed the material fact that the complainant is defaulters, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the statement of account.
- XVIII. Further, the respondent has already obtained occupancy certificate and offered possession of the property in the year 2019 itself, however till date the complainant has not come forward to accept the possession of the property and pay their balance dues. That, therefore, the default is entirely on behalf of the complainant and the respondent cannot be held responsible for the same.
- XIX. That further the Apex Court vide an order dated 11.01.2021 in *Ireo Grace Realtech (P) Ltd Vs Abhishek Khanna, 2021 (3) SCC 241*, has clearly observed that once possession has been offered along with occupation certificate, the buyer/allottee cannot deny the possession.
- XX. That further this act of the complainant not only goes in contradiction with the settled law but even breaches the builder

buyer agreement dated 05.07.2010. That Clause 16 of the builder buyer agreement dated 05.07.2010 establishes the *procedure for accepting possession*.

- XXI. That the complainant has not cleared its outstanding dues and is in default of a large amount excluding the delay interests out of total consideration of Rs.47,45,038/-. Therefore, the complainant cannot rightfully claim for possession, since the possession has not been handed over due to complainant own default.
- XXII. That the complainant has already been offered possession in 2020 itself but it is the complainant who has not come forward to accept the possession of the property since past three years. That the initial offer of possession has been made in 2018 itself, wherein the respondent has requested the complainant to clear all the outstanding dues and accept the possession of the property. However, the complainant with extraneous motives has intentionally delayed the acceptance of possession of property.
- XXIII. That it is due the lackadaisical attitude of the complainant along with several other reasons beyond the control of the respondent as cited by the respondent which caused the present unpleasant situation. That it is due to the default of the complainant, the allotment could not have been carried out.
- XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. 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.

XXVIII. 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.

XXIX. 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.

XXX. 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.

XXXI. That the complainant primary prayer for handing over the possession of the said apartment is entirely based on imaginary and concocted facts by the complainant and the contention that the respondent was 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 complainant had complete knowledge of the fact that

the zoning plans of the layout were yet to be approved and the initial booking in 2010 was made by the complainant 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 complainant; hence the complaint does not hold any ground on merits as well.

XXXII. That further the respondent has applied for the mandatory registration of the project with this authority but however the same is still pending 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 the Act. It is submitted herein that since there was delay in zonal approval from the DGTCR the same has acted as a causal effect in prolonging and obstructing the registration of the project under the Act 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 respondent. This by any matter of fact be counted as a default on the part of the respondent.

XXXIII. 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 an apartment 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 flat. Hence the complaint is liable to be dismissed on this ground as well.

XXXIV. 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	400	OC received
	Tower H, N	160	OC received
	Tower-O (Nomenclature - P)	80	OC received
	(Tower A, B, C, D, E, F, G)	640	OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

XXXV. That the complainant is short-term speculative investor, their only intention was to make a quick profit from the resale of the land and having failed to resell the said apartment due to recession and setbacks in the real estate world, have resorted to this litigation to grab profits in the form of interests. It is most strongly submitted herein that the complainant was never interested in the possession of the property for personal use but only had an intent to resell the property and by this, they clearly fall within the meaning of speculative investor.

XXXVI. Further, that the delay in delivering the possession of the flat to the complainant herein has attributed solely because of the reasons beyond control of the respondents.

XXXVII. That further, on the other side, the respondent has applied for the mandatory registration of the project with the authority and has successfully received registration certificate No. 279 Of 2017 and



has been extended vide Memo No. HARERA/GGM/REP/RC /279/2017/EXT/98/2019 dated 12.06.2019 which is valid up till 18.02.2025. 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 the Act. 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 the Act 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 respondent. This by any matter of fact be counted as a default on the part of the respondent.

XXXVIII. 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.

XXXIX. 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.

XL. That by virtue of the tri-partite agreement dated 20.10.2010, the HDFC Bank is a necessary party to the present complaint. However, the same has not been impleaded as a necessary party.

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 complainant being investor**

10. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent 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 complainant is buyer and he has paid total price of Rs.49,94,942/- 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 complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investors is not defined or referred in the Act. Thus, the contention of promoter that the

allottee 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 provide the complainant with prescribed rate of interest on delay in handing over of possession of the apartment on the amount paid by the complainant from the due date of possession as per the buyer's agreement till the actual date of possession of the apartment.
- G.II** Direct the respondent to submit an affidavit stating the anticipated date of delivery of possession and handover the possession of the apartment by such date.
11. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

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 complainant is seeking delay possession charges at the prescribed rate. 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 complainant/allottee is 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 allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the 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.III Direct the respondent to remove the unlawful water supply connection charges and GST and CGST charges from the statement of account.

22. **GST and CGST charges:** - The complainants have sought the relief that the respondent has not to charge GST and CGST 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 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 Allottee undertakes to pay additionally to RAMPRASTHA on demand the actual cost of the electricity, water and sewer consumption charges and/or any other charge 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*

"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 leviabale 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.”

23. 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 complainant in regard to the illegality of the levying of the said taxes.
24. 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/CGST from the complainant/allottee as the liability of GST/CGST had not become due up to the due date of possession as per the agreements.



25. **Water supply connection charges:** - 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.
26. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the apartment buyer's agreement executed between the parties on 23.09.2010, 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. Therefore, the due date of handing over possession is 31.08.2012. Occupation certificate has been received by the respondent on 13.02.2020 and the possession of the subject unit was offered to the complainant on 19.02.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and

conditions of the apartment buyer's agreement dated 23.09.2010 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 23.09.2010 to hand over the possession within the stipulated period.

27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.02.2020. The respondent offered the possession of the unit in question to the complainant only on 19.02.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 31.08.2012 till the expiry of 2 months from the date of offer of possession (19.02.2020) which comes out to be 19.04.2020.



28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 31.08.2012 till the expiry of 2 months from the date of offer of possession (19.02.2020) which comes out to be 19.04.2020 as per provisions of 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 the interest at the prescribed rate i.e., 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 31.08.2012 till 19.04.2020. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of

interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act;

- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is debarred from claiming holding charges from the complainant /allottee 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

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 24.03.2022