BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**2146 of 2020**
First date of hearing:		**17.09.2020**
Date of decision	**:**	**10.12.2021**

1. Ashok Manchanda
2. Poonam Manchanda
Both RR/o: - B-3/60, 3rd Floor,
Safdarjung Enclave, New Delhi- 110029 **Complainants**

Versus

M/s Ramprashtha Promoters and
Developers Private Limited.
Regd. office: - Plot No.114,
Sector-44, Gurugram-122002. **Respondent**

CORAM:
Shri K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Ashok Manchanda Complainant in person
Ms. R. Gayatri Advocate for the respondent

ORDER

1. The present complaint dated 17.08.2020 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the

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

A. **Unit and project related details**

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

S.No.	Heads	Information
1.	Project name and location	"The 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 DTPC 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.	B-002, ground floor, tower B [Page no. 86 of complaint]
11.	Unit measuring	2390 sq. ft. [Super area]
12.	Date of execution of apartment buyer's agreement	25.03.2014 [Page no. 82 of complaint]

13.	Date of allotment letter	17.09.2011 [Unit no. A-1302, at page no. 37 of complaint]
14.	Payment plan	Construction linked payment plan. [Page no. 107 of complaint]
15.	Total consideration	Rs.85,19,400/- [as per schedule of payment page no. 107 of complaint]
16.	Total amount paid by the complainants	Rs.70,84,625/- [as per receipt information annexure- R/2, page no. 31 of reply]
17.	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. 96 of complaint]	31.08.2012 [Note: - 120 days grace period is not allowed]
18.	Occupation Certificate,	Not obtained
19.	Date of offer of possession	Not offered
20.	Delay in handing over possession till date of this order i.e. 10.12.2021	9 years 3 months and 10 days

B. Facts of the complaint

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

    I. That having been approached and lured on behalf of the respondent with the aforementioned claims and believing the representations of the respondent, the complainants on 09.09.2011 booked a 4-BHK, residential flat bearing flat no. A-1302 along with one parking in "The Edge Towers" project

located at Southern Court, Ramprastha City, Sector 37-D, Gurgaon for their own residential purposes. That at the time of booking, the complainants made an online transfer for an amount of Rs. 10,00,000/- vide online payment/transfer dated 09.09.2011 through RTGS.

II. That thereafter an apartment buyer agreement (ABA) was entered between the party on 11.09.2011. That it would be pertinent to note that at the time of signing of the agreement, an executive of the respondent came with a blank booking form and got the same signed from the complainants with the assurance that a copy of the said form would be given to the complainants shortly, which was never done thereafter.

III. That thereafter the respondent issued Letter of allotment dated 17.09.2011 and allotted flat no. A-1302, having 4-BHK along with one parking in the Edge Towers located at Ramprastha City, Sector- 37-D, Gurgaon for a total sale consideration of Rs.85,19,400/-.

IV. That the basic sale price (BSP) charged was @ Rs. 3075/- per sq. ft of super area of 2390 sq. ft. The complainants being not satisfied with the allotment of an apartment at the 13th floor, it was agreed that the respondent would soon offer another suitable apartment to the satisfaction of the complainants at some other lower floor. The respondent vide its letter dated 19.06.2012 offered to the complainants flat no. B-002 in Tower B and again

vide its letter dated 17.07.2012. Further confirmed to M/s IndiaBulls, the financing company, that the area, specifications, and value of the proposed flat was the same as for the earlier A-1302.

V. That it would be pertinent to note here that at the time of signing of the agreement, it was quite explicitly promised by the respondent that construction of the flats would be completed by the end of August 2012. The 2nd complainant being a Civil Servant who was due to retire on 30.04.2012 wanted to shift straightaway from the Government accommodation to his own apartment, and thus wanted to from escape the hassles of repeated transfers of residence and thus save themselves from the avoidable burden of paying heavy rents. It is clarified that the complainants chose to buy a flat from the respondent for the main reason that its promised date of August 2012 for handing over of possession of flat to the complainants. This date synchronized well with the due date of possession i.e. 31.12.2012, the final date for vacating and handing over the possession of the Government accommodation occupied by the complainants.

VI. That on subsequent events and revelations prove that even at the time of booking, the project of respondent was stuck up for certain reasons which though unknown to the complainants were well-known to the respondent, yet it falsely and fraudulently misrepresented and projected to the complainants that its project

was nearing completion. On this basis, it fast tracked the balance consideration and had collected as much as Rs.68,84,625 i.e. over 80% of the total consideration, by 17.07.2012 i.e. within a short span of 10 months of the booking. That the project was stuck up with serious issues and problem was apparent from the fact that no visible accretion and improvement to the project, in general, and the relevant tower, in particular, was affected in the next even 5-6 years. It is very further evidenced by the fact hardly any demand for further payment was made as no further milestone had been achieved. Yet it kept on assuring the complainants, falsely and fraudulently, that they will complete to complete the project in time and compensate them fully for the delays.

VII. That shortly after booking, the complainants learnt that the BSP of Rs. 3075/- per sq. ft. charged by the respondent from them was much higher as against the BSP rate of Rs.2800 per sq. ft. circulated by the respondent from all other allottees. It was learnt that the actual rate was Rs.2500 per sq. ft., or even less than that. Not only much higher price was charged, but over 80% of the total consideration has already been deposited from the complainants within 9 months of the booking as is evidenced by the contents of price list & payment plan as against the much longer time span of 2-3 years allowed by the respondent in the case of other allottees. The complainants also to cancel the booking thought, the respondent, confronted with this stark

reality and finding no reply, assured the complainants to compensate them by providing them with the woodwork for the entire flat and modular kitchen, without charging any amount from them. In due course, the complainants duly reminded him of his assurances vide their letters dated 12.05.2013, 18.07.2013, 12.08.2013 and it was never denied or controverted by the respondent till date.

VIII. That one of the complainants regularly visit the construction site and every time the complainants pointed to the delays, the respondent would make false promises or give evasive replies to the queries of complainants. That finally the due date of handing over of possession of the flat arrived in the month of August 2012 as agreed by the respondent, but at that time also, even the basic structure of the flat was not fully ready. The respondent referred to the extended time of 4 months under the agreement and assured that he will try his best to complete the project as soon as possible and the complainants would be duly compensated for the delays, if any. The complainants were again assured that the respondent would compensate the complainants by doing good woodwork in the flat and by providing Modular kitchen free of cost for the excess price charged. That even after December 2012 when the scheduled date for delivering the possession of the flat was well past, the same status continued and there was not much improvement towards the construction and completion of flats.

With a view to hoodwink the allottees and to create a false impression among the allottees, the respondent in the early part of the year 2013, circulated a notice seeking the options if the allottees would like to have modular Italian kitchen.

IX. The complainants responded positively and wrote multiple times to have the modular kitchen and the woodwork also in the flat as per its promises made in the beginning. However the respondent never replied and later it was observed that it was a hoax floated around to create a false impression among the allottees as if the project was nearing completion. When complainants demanded an explanation for the delay, the respondents gave excuses of recession and lack of availability of labour and asked for further time to complete the project. It was at this stage that the complainants decided to place on record vide their letters dated 13.03.2013, the difficulties and losses suffered by them because of the rent paid by them and excess income tax liability paid by them because of the delays.

X. That even after the lapse of 4 more months the status of the construction was more or less the same. When confronted, the respondents promised that the complainants would for sure be given compensation, in addition to the already promised woodwork and modular kitchen. Further the respondent now assured the complainants, possession would be handed over latest by March 2014.

XI. That on receiving this information that there was going to be a further delay of one year in delivering the possession of the flat, complainants submitted their protest and demanded the respondent to compensate the complainants for the additional expenses incurred by them on rent, interest, and additional income tax liability all because of the callous attitude towards the works to be performed by the respondent. On listening to the objections of the complainants, the executives of the respondent assured & re-assured the complainants and promised that all the additional costs/expenses/losses/compensation due to delay in delivering the possession of flat will be borne by respondents. It further assured the complainants that no further amount, installment etc. payable by the complainants wound be demanded for payment and the same would be adjusted/set off against the compensation, interest etc. falling due to the complainants for reasons of delays and harassment caused to them. The respondent however kept this promise and never demanded to deposit any further amount.

XII. That during the period of March 2013 to March 2014, there were numerous calls made by complainants to the respondent demanding the status of project, but the respondent was never respond and kept on lingering the issue. That thereafter in March 2014, the condition of the flat was far from complete, and when complainants demanded an explanation, the respondent assured

them that due to some problems, the construction had further been delayed and now the possession would be handed over by February 2015. Although they were much aggrieved by the false promises of the respondent but being in fear of such substantial amount being lost or struck, the complainants were left with no alternative but to wait, and only wait, knowing that the assurance of the respondent were false. Further the complainants were again assured of enhanced compensation.

XIII. That there was another development that had taken place in 2012 soon after allotment of the plot in 2011. Although the flat initially allotted to the complainants was a flat at 13th floor i.e. A-1302, but the complainants being not satisfied with the same had accepted flat no. A-1302 subject to it being changed to some other/lower floor at the earliest. Sometime later vide letter dated 19.06.2012, the complainants were offered another flat i.e. B-002 in tower B of the same Edge Tower Project which was of the same size and same specifications. Though this new flat was not entirely as per the request of the complainants, they asked for some other options. As no other offer was coming forth from the respondent, the complainants communicated their acceptance of B-002 in Tower B. The subsequent allotment letter and builder buyer agreement dated 25.03.2014, between the parties was considered as one in continuation of the initial agreement signed for the booking of flat no. A-1302 and all the terms agreed by

parties were same and the subsequent flat was for the same consideration and was of the same size and its date of acquisition/allotment would also relate back to the date of acquisition/allotment of the original flat i.e. A-1302. It was also agreed and understood that the rights of the complainants in no manner would be adversely effected because of this change, and at the time of changing to flat no. B-002, it was specifically promised by the respondent that that this subsequent booking did not in any way affect the earlier compensation rights already accrued to the complainants which was due to delay in delivery of the flat.

XIV. That it is important to make this fact clear that the subsequent agreement signed between the parties was not *a de novo* agreement, but was only a continuation of the initial agreement, so the terms of earlier agreements were still binding over the respondents and this suggestion is further corroborated by the fact that the subsequent document signed by the parties as 'agreement to sell' supports the narrative of the complainants which explicitly binds the respondents to deliver the possession of flat by the end of August 2012. That on 25.03.2014, the date of the subsequent agreement, the delivering of the possession of flat A-1302 had already suffered a delay of a year and a half.

XV. That the project was again largely incomplete even at the end of February 2015 and now the respondent even stopped

communicating with the complainants. That even at this stage, the complainants kept their patience, but the callousness and insensitivity of respondent were to such an extent that it was not willing to answer any of the queries of the complainants who kept on regularly reminding the respondent as to the additional losses/liabilities they were made to suffer because of the delays on the part of the respondent.

XVI. That the respondent has committed a serious breach of trust and in a very well-planned manner cheated the complainants and has caused huge losses to the complainants by delaying the possession of the flat. As per Para 15(a) of the said agreement, possession of the said flat was to be offered by the builder on or before 31.08.2012 or after an extension of 120 days from the said date. However, the project has been abnormally delayed due to which the money of the complainants had been blocked since September 2012 (when over 80% of the total consideration of the Flat had been paid to the respondent) which had been raised by way of loans and through other sources/savings. Thus the complainants were forced to wait indefinitely for delivery and occupation of their apartment. The Builder-Buyer Agreement is highly onerous, unfair, iniquitous, and totally one-sided against the interests of the complainants.

XVII. During the last 3 years, the complainants visited the office of the respondent multiple times, but most of the times did not find any

responsible manager in spite of prior intimation and appointment. Being not satisfied with the almost total lack of response from the executives of the Company, the complainants requested multiple times the respondent to share with them the contact details i.e. the addresses, Phone Nos., Mobile Nos., E Mail IDs etc. of the Directors and other senior authorised persons so that all pending issues could be discussed and resolved by meeting them. Unfortunately, the respondent neither did anything to address the concerns of the complainants nor shared with them the contact details of the directors and other senior executives. So much so that they even stopped responding to the communications of the complainants.

XVIII. Surprisingly, the respondent company has been guilty of showing height of insensitivity and callousness to the genuine concerns of allottees, so much so that it did not deem it necessary to respond even once to the dozens of communications of the allottees who had invested their life's savings and aspirations in its project. The company has been constantly shifting the goal post., Against the due date of August 2012 for possession, the possession was postponed to several dates in the years from 2013 to 2016.

XIX. The complainants are genuinely apprehensive that the respondent may again go back on its promises and assurances. This apprehension also, along with others, has prompted the complainants to file this complaint. It is earnestly prayed that the

adjudicating authority may restrain the respondent from demanding payment of any further amount for the purposes of possession, direct the respondent to set off of any legitimate demand against the interest and compensation becoming due to the complainants for a delay of 7 years and should further direct the respondent to pay the balance amounts as claimed as per the prayer to the complaint.

XX. That the agreement entered into between the complainants and respondent does not contain the proportionate liability clause to fasten commensurate penalty/damages on respondent for breach in discharge of his obligations. While time has been made essence with respect to apartment allottee's obligations to pay the price and perform all other obligations under the agreement, respondent has conveniently relieved himself by not making time as essence for completion in fulfilling its obligations, more particularly, handing over the physical possession of the apartment to the apartment allottee. While the respondent charges Interest @18% p.a. on any delay in payment, but on delays on its own part, as per para 17 of the agreement, it compensates the allottees only @ Rs.5/- per sq. ft. of super area per month which works out to less than 2% p.a. of the amount invested. It is prayed that the adjudicating authority may treat the agreement as unfair, one-sided, monopolistic, and taking unfair advantage of the weak position of the complainants and grant

suitable and reasonable compensation, interest etc. to the complainants at the same rate at which it charges the complainants. It may also declare such like provisions and clauses as specify that compensation will be payable after the last instalment as unfair, one-sided, unlawful, monopolistic, and taking unfair advantage of the weak position of the complainants.

XXI. The complainants are charged a sum of Rs. 2.5 lakhs on account of car parking levied by the respondent. As per the decision of the Hon'ble Supreme Court in ***"Nahalchand Laloochand Pvt. Ltd. v/s Panchali Cooperative Housing Society Ltd." 2010 AIR (SC) 3607***, car parking being mandated by the law cannot be charged separately. Car parking is an essential part of the flat and is also a part of the common areas & facilities and thus does not form part of the saleable area and, therefore, cannot be charged separately. Any amount recovered by the respondent on this account is against the law and the respondent was, therefore, requested to reverse these charges with service tax and give credit to the complainants. Same is the case with the club charges which the respondent may levy after possession and the same may also be held unlawful and thus not chargeable.

XXII. As per para 1(g) of the Agreement, the charged super area is tentative and liable to be recalculated on completion. Besides the issues raised in the various communications, the complainants raised another area of concern i.e. excess charging on the basis of

super area for which no basis had been provided even after the project was structurally almost complete. That though the charged super area is 2390 sq. ft., but the actual covered area and the legitimately chargeable super area is much less which the respondent company has not declared till date. With the project structurally complete, there should not be any difficulty in working out the total covered area of the project/tower /Individual flats vis-à-vis the total super area/carpet area as per the applicable laws and also to show with exactitude how the super area/carpet area has been computed. There should not have been any difficulty in determining with exactitude the actual covered area and the legitimately chargeable super area and the ratio of the two with justification. Further letter such as dated 30.12.2017 followed by several reminders to the respondent company. The complainants had their genuine apprehensions and strong reasons to believe that the actually charged super area of 2390 sq. ft. is much more by over 20% than the genuinely chargeable super area/carpet area, keeping in view the actual area of the flat which is believed to be around 1400 sq. ft. All information relating to the computation of super area is in possession of the respondent. It is earnestly requested that the adjudicating authority may direct the respondent to disclose very transparently how the chargeable super area/carpet area was computed vis-à-vis the actual covered area in the cases of the

complainants and of other allottees, and also to show that the method employed was fair and judicious. If the actually charged super area of 2390 sq. ft. is found to be more than the genuinely chargeable super area, it is prayed that that the adjudicating authority may direct the respondent to reduce it accordingly and refund the extra amount charged to the complainants.

XXIII. That the respondent has been charging EDC/IDC @ Rs.335/- per sq. ft. It is a charge which is payable to the Government or statutory authorities; and no part of it can be retained or appropriated by the builder/developer. Sometime in the 1st half of the year 2016, the complainants were informed by the respondent company that the EDC/IDC rate of Rs.335/- per sq. ft. had been reduced by the concerned authorities. As the License issued by the DTCP, Haryana in the Respondents case vide Memo No. 33 of 2008 dated 19.02.2008 is of the year 2008, the EDC & IDC chargeable by the respondent as per the rules works out to around Rs.200/- per sq. ft. The complainants requested the respondent to refund the extra amount already charged by it, by disclosing the reduced rates with the basis thereof. But the respondent instead of refunding the same is of the view that it will be adjusted against the future payables at the time of possession. The respondent has though not intimated the rate and amount of total reduction, but it is reliably learnt that the overcharging is of the order of well over Rs.135 to Rs.150 per sq.

ft. and in all it amounts to over Rs.3,00,000/- in the present case. The complainants vide their letter dated 12.09.2016 requested the respondent that the refunds due to them on account of reduction in EDC/IDC Charges and service tax may be refunded to them or credited instantly to their account and it need not wait for the handing over of possession. It was all the more necessary when the company had collected all its dues on accrual basis/ whenever falling due, there was no point in nor was it fair to keep the refunds pending for long periods till possession. But the respondent company has not responded to the requests of the complainants till date. It is prayed that the respondent company may be directed to furnish the computation of the legitimately chargeable EDC/IDC with the relevant facts & figures and refund the extra amount charged by it with interest from the date it fell due. As per para 5 of the Agreement, the complainants were liable to pay only legitimate EDC/IDC charges as were lawfully payable to Government or statutory authorities. No part of it was to be retained by the respondent. A write-up about the chargeability of the EDC & IDC and the computation of legitimately chargeable amount which works out to about Rs.200/- per sq. ft. of super area, computed as the rules & regulations, Notifications issued under the Haryana Development & Regulation of Urban Areas Act 1975 and Haryana DTCP functions and policy.

XXIV. That the respondent in the year 2016 started making demand for payment of VAT which as per the agreed terms & conditions was never specified and thus not chargeable. Without prejudice to this basic objection, the complainants dispute this demand for other reasons also mentioned hereinafter. Instead of taking action on the requests & demands for compensation & interests of the complainants, the respondent on the contrary, started demanding payment of bogus demands on account of Value Added Tax (VAT), in spite of its earlier assurances that no demand for payment would be made payment, and the same would be set off against the compensation & interest due the complainants. The respondent vide its letter dated 15.07.2016, firstly demanded VAT@ Rs.100/- per sq. ft of super area at Rs.2,39,000/-. On protests raised by the complainants and other allottees, vide letter dated 22.10.2016, it reduced its demand to 1.05% amounting to Rs. 87,647/- of the cost of Rs.83,47,320/- of the allotted flat. It has been learnt that even this reduced demand also been disputed by the respondent and has not been paid by it to the Government. No evidence of having paid this tax amount to the Government has been furnished by it. After the complainants raised inconvenient queries about this unlawful demand, the respondents started avoiding the complainants and even stopped responding to the various communications of the complainants. The E-mail records bear evidence to the fact that scores of

messages and communications by the complainants not only remained un-responded, unacknowledged also for years. It is requested that the respondent may be prohibited from charging any amount of VAT as not being as per the agreed terms & conditions. Further, it be restrained from charging and demanding any liability on account of VAT until it has unequivocally & finally accepted the same and paid it also into the Government account.

XXV. That respondent has intentionally and deliberately failed to fulfill their obligation, which clearly proves the deficiency of service and unfair/illegal trade practice on the part of the respondent. That the respondent has taken undue advantage of the weak position of consumers who either are not in a position to or are unwilling to enter into long drawn litigation with big builders like the respondent. This is clearly an unfair practice which the respondent follows in order to avoid paying compensation for delay in completion of the project.

XXVI. That the complainants are consumers and has suffered mental tension, agony, harassment perpetrated by the respondent. That this adjudicating authority has territorial jurisdiction to entertain the present complaint as per the allotment letter and further has the pecuniary jurisdiction also.

XXVII. Those violations, deficiencies in services and some of the offences committed by the respondents are of continuing nature and the

complaint, therefore, is within the period of limitation as prescribed under the law.

C. Relief sought by the complainants:

4. The complainants have filed an application dated 18.10.2021 for amendment of relief sought and transfer the case to the authority and the same was allowed vide order dated 25.10.2021. The complainants have sought following relief(s):

   i. To direct the respondent to handing over the flat of the complainants.
   ii. To direct the respondent to granting delayed possession compensation to the complainants.
   iii. To removal and reduction of certain unlawful and undue charges.
   iv. To pay compensation for harassment.

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 filed a reply on 09.10.2020 which was addressed to the adjudicating officer. The said complaint was transferred to authority for further proceedings vide order dated 25.10.2021 and the reply filed before the adjudicating officer was considered as a corresponding reply by the authority. The respondent has contested

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the complaint on the following grounds. The submissions made therein, in brief are as under:

I. That the present complaint has been filed by the complainants before this adjudicating officer inter alia praying for direction to handover the possession of the apartment bearing no. B-002 in Tower - B admeasuring 2390 sq. ft. in EGDE Towers along with interests and litigation costs in sector 37D without any additional charges; to award interest on the amount paid by the complainant for delay in handing over of the possession of the plot by the respondent.

II. That the complainants are not genuine buyers of the apartment but are merely speculative investors who have purchased the present property in question with sheer commercial motives. That the Act has to be read in consonance with Consumer Protection Act. That the combined reading of the Act, 2016 and the Consumer Protection Act does not establish the present complainants as a 'Consumer' within the meaning of the Consumer Protection Act. Further, that even the complainants have failed to adduce any kind of documentary proof to establish the fact that they are 'consumers' and thence, genuine buyers of the apartment. This clearly shows that the complainants have sheer commercial motives.

III. That the 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 complainants cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the Act, 2016. The complainants are only an investor in the project who has purchased the said 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.

IV. That the Act, 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.

V. 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 respondent 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.

VI. That the present case the complainants have booked an apartment in the project "The Edge Tower" of Ramprastha City in sector 37D, Gurugram on 09.09.2011 and accordingly, an allotment letter dated 17.09.2011 was issued by the respondents against a 4BHK apartment bearing unit no. A-1302, tower A, "The EDGE towers" admeasuring 2390 sq. ft. along with one parking space for a total consideration of Rs. 85,19,400/-. Thereafter, an apartment buyer agreement dated 11.09.2011 was executed between the parties.

VII. That as per the averments of the complainants, the complainants were not satisfied regarding the floor of the apartment i.e., 13th floor and therefore, made a request for issue of an apartment at a lower-level floor. Therefore, considering the request made by the complainants, the respondents have accordingly made an arrangement for allotment of another apartment of same specifications at the first floor of the apartment bearing no. B-002. Accordingly, letter dated 19.06.2012 was issued to the complainants confirming the same. Subsequently, an allotment letter and a builder buyer agreement for unit no. B-002 was executed on 25.03.2014.

VIII. That the respondent has already informed the complainants that occupation certificate has been received for the said project and the respondents will be able to offer possession of the apartment shortly subject to payment of outstanding dues. However, it is due to the default of the complainants in clearing the outstanding dues which is causing further delay in delivery of possession. The complainants, through their own averments, have categorically agreed to this fact that continuous demands for the payment of outstanding dues and other charges have been made by the respondents which has not been abided to by the complainants. This fact itself proves that it is solely due to the default of the complainants that the said unit has still not been handed over by the respondents.

IX. That further the complainants are already in ownership of one property bearing no. B- 3/60, 3rd Floor, Safdurjung Enclave, New Delhi-110029. Hence, by any standard of imagination, the complainants cannot to be said to have purchased the said 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 present 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.

X. That the entire transaction of the complainants with the respondent of purchasing a unit in the project was for a "commercial purpose" and hence, in view of catena of judgments of the Hon'ble National Consumer Disputes Redressal Commission, the complaint before the adjudicating officer is not maintainable in its present form and hence is liable to be dismissed at its very beginning.

XI. That the complainants are not entitled to claim possession as the claimed by the complainant in the complaint as the claim is clearly time barred. That it is due the 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 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 have any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of

several years at such an interest only raises suspicions that the complaint is only made with an intention to arm twist the respondent. The entire intention of the complainants is made crystal clear with the complaint and concretes the status of the complainant as an investor who merely invested in the project with an intention to draw back the amount as an escalated and exaggerated amount later. Further, the complainants invested in the project only with the motive to reap the benefits of the escalated property rates at a later stage.

XII. That the complainants were actually waiting for the passage of several years to pounce upon the respondent and drag the respondent in unnecessary legal proceedings. That huge costs must be levied on the complainants for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent.

XIII. That the complainants have concealed its own inactions and defaults since the very beginning. The complainants have deliberately concealed the material fact that the complainants are at default due to non-payment of several installments within the time prescribed, which has also resulted into delay payment charges/ interests.

XIV. That as per its own averment the complainants have agreed that there is still an outstanding payment on complainant's part, which has caused a hindrance in delivery of possession of

the apartment. In this behalf, the complainant has itself agreed that the complainants are at default for the payment of the abovementioned amount. Therefore, in view of this it is submitted that the complainants cannot be allowed to benefit out of its own default. The complainants are liable to pay all such amounts which have been rightfully demanded by the respondent; in absence of which, the complainants cannot rightfully be entitled to any possession of unit.

XV. That the respondent had to bear with the losses and extra costs owing due delay of payment of installments 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.

XVI. That from the initial date of booking to the filing of the complaint, the complainants have never raised any issues or objections. Had any valid issue been raised by complainants 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 complainants have filed the complaint based on fabricated story woven out of threads of malice and fallacy.

XVII. That the complainants have been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondents into agreeing with the unreasonable demands of the complainants. The reality behind filing such complaint is that the 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.

XVIII. That the delay has occurred only due to unforeseen and untackleable circumstances which despite of best efforts of the complainants hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the apartment for which the complainants cannot be held accountable. However, the complainants 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 complainants with a wrongful intention to extract monies.

XIX. That the said terms and conditions of the agreement were executed only after mutual discussion and decision and agreement of both the parties and in such a case, one party cannot withdraw itself from the boundation of the agreement. That once the said agreement was duly signed and accepted by the both the parties which contains detailed terms and conditions the parties are obligated to abide by it and either of parties cannot divert itself from the obligation of performance of their parts manifested in the agreement on it owns whims and fancies and as per their own convenience. It is to be noted that performance and non-performance of the agreement affects both the parties equally and sometimes one party is at a greater disadvantage when one party abstains from performance of its part. The complaint is entertained, and refund as claimed is granted to the complainants not only will the project come to an uncalled and abrupt halt and effect the complainants, but it will also indirectly impact several other allottees who are patiently waiting for handover of possession of their apartments.

XX. That apart from the defaults on the part of the allottees, like the complainants herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent

- The project faced various roadblocks and hindrances including approvals from different authorities which were beyond the control of the complainants and which in turn lead to unforeseeable delay in the construction/ completion of the project and hence handing over of the possession of the flat to the complainants.
- Active implementation by the Government of alluring and promising social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), further led to sudden shortage of labour/workforce in the real estate market as the available labour were tempted to return to their respective States due to the guaranteed employment under the said NREGA and JNNURM Schemes. The said factor further created a vacuum and shortage of labour force in the NCR region. Large numbers of real estate projects, including the present project of the complainants, were struggling hard to cope with their construction schedules, but all in vain.
- Extreme water shortage, which was completely unforeseen by any of the real estate companies, including the opposite party, in the NCR region. The complainants, who was already trying hard to cope up with the shortage of labour, as mentioned above, was now also faced with

the acute shortage of water in the NCR region. The said factor of shortage of water directly affected the construction of the project at the site. To make the conditions worse, the ***Hon'ble High Court of Punjab and Haryana vide Order dated 16.07.2012*** restrained the usage of ground water and directed to use only treated water from available Sewerage Treatment Plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurugram District, it became difficult to timely complete the construction activities as per the schedule. The availability of treated water to be used at construction site was very limited and against the total requirement of water only 10-15% of required quantity was available at construction sites. In furtherance to the directions of ***Hon'ble High Court of Punjab and Haryana***, the opposite party received a Letter bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana, informing the opposite party about the complete ban on the use of underground water for construction purposes and use of only recycled water being permitted for the said purposes.

- That the opposite party neither had any control over the said directions/orders from the Hon'ble High Court nor had any control over the shortage of water in the NCR region, which in turn led to the delay in the completion and hence the handing over of the possession of the Flat to the complainants.
- There has been a heavy shortage of supply of construction material i.e. river sand and bricks etc. through out of Haryana, pursuant to order of Hon'ble Supreme Court of India in the case ***Deepak Kumar etc. v. State of Haryana*** (I.A. No. 12-13 of 2011 in SLPs (C) nos. 19628-29 of 2009 with SLPs (C) No. 729-731/2011, 21833/2009, 12498-499/2010, SLP(C) CC... 16157/2011 & CC 18235/2011 dated 27 February 2012) and correspondingly, the construction progress slackened. This also caused considerable increase in cost of materials. It is noteworthy that while multiple project developers passed on such incremental costs attributable to the above reasons to the buyers, the management of the opposite party assured its customers that it will not and has held fast on its promise by not passing on any of such costs to the buyers.

XXI. That the extended date of possession has been accepted by majority of the flat buyers and is therefore binding on all and a single flat buyer cannot be allowed to dispute the extended

date of possession and withdraw from the project thereby jeoparding the project causing prejudice to large number of flat buyers. It is submitted that since the project has already stepped towards completion, it is impossible to generate funds to refund whimsical claimants like the petitioner without putting the entire project at the risk of default.

XXII. That the respondents have made huge investments in obtaining approvals and carrying on the construction and development of 'EDGE' project and despite several adversities is in the process of completing the construction of the project and have already obtained the occupation certificate of 8 towers out of 15 towers and should be able to apply the occupation certificate for the other towers (including the apartment in question) by 31.12.2020 (as mentioned at the time of application for extension of registration of the project with authority) or within such extended time, as may be extended by the authority, as the case may be. The complainants persuaded the respondents to allot the said apartment in question to them with promise to execute all documents as per format of the respondents and to make all due payments. The respondents continued with the development and construction of the said apartment and had to incur interest liability towards its bankers. The complainants prevented the respondents from allotting the said apartment in question to any other suitable

customer at the rate prevalent at that time and thus the respondents have suffered huge financial losses on account of breach of contract by the complainants.

XXIII. That even in the cyclone of adversities and the unpredicted wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyers/allottees. That even in such harsh market conditions, the respondent has been continuing with the construction of the project and sooner will be able to complete the construction of the project.

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

S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received

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

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)(a)

> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> *The provision of delayed possession charges is part of the application form, as per clause 7(b) of the application form dated 04.09.2010. Accordingly, the promoter is responsible for all obligation s/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

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 investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims& objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and they have paid total price of Rs.70,84,625/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to*

whom such plot, apartment or building, as the case may be, is given on rent;"

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

11. There is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the construction 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 occupation certificate for the subject unit has been obtained. However delay

possession charges as ascertained by the authority shall be payable to the complainants as per provisions of the Act.

G.II Direct the respondent to pay delayed possession charges to the complainants.

12. 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."*

13. 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."*

14. 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.

15. 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.

16. **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.

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

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

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

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

unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

20. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 10.12.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

21. The definition of term 'interest' as defined under section 2(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;"*

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

G.III To pay compensation for harassment

23. The complainants are claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottees can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

24. 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 authority has observed that the apartment buyer agreement was executed on 25.03.2014 and the due date of possession was specifically mentioned in the apartment buyer agreement as 31.08.2012. Though, the complainants have been paying for the said apartment since 17.09.2011 and it is erroneous on the part of the respondent that he executed the apartment buyer agreement after a delay of almost 2.6 years when he started collecting payments from the complainant since 2011. It is a well settled law that ***"No one can take benefit out of his own wrong"***. Therefore, the authority is of the view that the due date of possession mentioned in the apartment buyer agreement as 31.08.2012 will prevail even though the buyer's agreement is executed

at a belated stage. By virtue of clause 15(a) of the agreement executed between the parties on 25.03.2014, 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. The respondent has failed to handover possession of the subject apartment 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 31.08.2012 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

25. 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 of 9.30% p.a. for every month of delay from the due date of possession i.e., 31.08.2012 till the date of handing over possession

of the said unit after obtaining the occupancy certificate from the concerned authority.

ii. The arrears of such interest accrued from 31.08.2012 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.

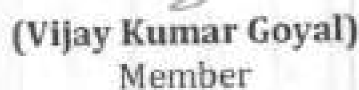
iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement

v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

26. Complaint stands disposed of.

27. File be consigned to registry.



(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2021