BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**3338 of 2021**
First date of hearing:		**13.10.2021**
Date of decision	**:**	**21.04.2022**

1. Neeraj Vij
2. Rinku Vij

Both RR/o: -E-1/3, first floor, phase- 1, DLF City, Gurugram — **Complainants**

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj, Western Avenue, Cariappa Marg, Sainik Farms, New Delhi-110062 — **Respondent**

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

APPEARANCE:
Sh. Dhruv Dutt Sharma (Advocate) — Complainants
Sh. Rahul Bhardwaj — Respondent

ORDER

1. The present complaint dated 13.09.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the

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

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Raheja's "Revanta", Sector- 78, Gurugram
2.	Project area	18.7213 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
7.	RERA registration valid up to	5 Years from the date of revised Environment Clearance
8.	Unit no.	IF8-02, First floor, block/tower- 8 [Page no. 60 of complaint]
9.	Unit measuring	2372.450 sq. ft.
10.	Date of execution of agreement to sell	23.05.2012 [Page no. 57 of complaint]
11.	Date of allotment letter	23.05.2012 [Page no 54 of the complaint]
12.	Payment plan	Installment linked payment plan [As per payment plan page 91 of complaint]

13.	Total consideration	Rs.1,49,22,383/- (As per customer ledger dated 22.05.2020 page no. 121 of complaint)
14.	Total amount paid by the complainants	Rs.1,32,65,261/- (As per customer ledger dated 22.05.2020 page no. 121 of complaint)
15.	Due date of delivery of possession as per clause 4.2 of agreement to sell (36 months + 6 months grace period from the date of execution of agreement in respect of "Tapas" Independent Floors) [Page 71 of complaint]	23.05.2015 [Note: - 6 Months grace period is not allowed]
16.	Delay in handing over possession till date of this order i.e., 22.04.2022	6 years 10 months and 29 days
17.	Occupation certificate /Completion certificate	Not received
18.	Offer of possession	Not offered
19.	Status of project	On going

B. Facts of the complaint

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

I. That the complainants are non-resident Indians and have booked a unit with the respondent with the aim of shifting to India after their retirement.

II. That the respondent is a company incorporated under the Companies Act, 1956 and is engaged in the business of real estate development and construction of projects.

III. That the respondent represented that it is seized and possessed of land measuring approximately 18.7213 acres situated at Village Shikohpur, Sector-78, District Gurgaon. The Respondent further represented that it has obtained Licence bearing no. 49 of 2011 dated 01.06.2011 from DTCP, Haryana.

IV. That in the year 2011, the respondent launched a new upcoming residential group housing colony in the name and style of **"Raheja's Revanta"** (hereinafter referred to as the "Project") to be developed at Sector-78, District Gurugram. The respondent had advertised the project through flyers, catalogues, magazines, brokers, newspapers etc. for persuading the public to invest in the project.

V. That the respondent induced the complainants with tall claims and believing their representations to be true and correct, the complainants vide application dated 06.12.2011 applied for allotment of unit and accordingly paid Rs.11,86,351/- towards the booking amount. The total cost of the unit was Rs.1,41,15,312/- including external development charges (EDC), infrastructure development charges (IDC), preferential location charges (PLC), IFMS, Club Membership and Parking.

VI. That soon after the booking, another sum of Rs.17,79,527/- was paid by the complainants to the respondent and an allotment letter

dated 23.05.2012 was issued by them, wherein the complainants were allotted a residential apartment bearing no. IF8-02, 1st Floor in Independent Floors 8 (hereinafter referred to as the "Apartment") in the aforesaid project.

VII. That the respondent in order to dupe the complainants in their nefarious net executed agreement to sell (hereinafter referred to as the "Agreement") dated 23.05.2012 with the complainants, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.

VIII. That subsequently the respondent raised various demands from the complainants from time to time which were regularly paid by the complainants and have also been acknowledged by various receipts issued by the respondent. As such till date, the complainants have paid a sum of Rs. 1,32,65,261/- out of the aforesaid total cost of Rs. 1,41,15,312/-. It is pertinent to mention here that despite paying such huge amount, the complainants were never apprised about the actual development status by the respondent despite repeated requests. It is pertinent to mention here that the respondent has many times levied interest on the complainants despite the complainants making the payments on time. It is only when the complainants used to confront the respondent then the respondent used to waive off the interest.

IX. That as per clause 4.2 of the agreement, the possession of the apartment was to be offered to the complainants within a period of 36 months plus grace period of 6 months from the date of execution of the agreement to sell i.e., by 22.11.2015. However, even after depositing 94% of the total sale consideration and delay of 5 ½ years, the respondent has not offered possession to the complainants.

X. That the last payment was made by the complainant on 13.02.2020 and thereafter the complainants has made numerous requests from the respondent asking them to give the possession of the apartment, but the respondent has been avoiding the complainants on one pretext or the other.

XI. That the complainants after getting no satisfactory reply from the respondent enquired about the status of the said project and the complainants were shocked to find out that construction of the project had not even been completed and the entire project is lying unfinished and far away from completion. That the respondent only suggest that respondent has a clear motive to dupe the complainants and they do not intend to give possession of the said apartment even in near future.

XII. That the respondent is a defaulter and has defaulted in its various other projects by not delivering the possession of the units on time. It is the tactics of the respondent to cheat and dupe the innocent and

gullible buyers such as the complainants by siphoning off the hard-earned money of the buyers for their own use and benefits.

XIII. That as per clause 4.2 of the agreement, if the respondent fails to complete the construction by the end of the grace period, it shall be liable to pay compensation @ Rs. 7/- sq. ft. of the super area of the apartment per month for the entire period of such delay. However, it is stated that the compensation offered by the respondent is not in line with the provisions of the Real Estate (Regulation & Development) Act, 2016.

XIV. That the conduct of the respondent has resulted in wrongful loss to the complainants and wrongful gain to the respondent herein, for which the respondent is even liable to be prosecuted under Indian Penal Code.

XV. That the acts of the respondent are causing great hardship and mental agony to the complainants and the complainants have no other option but to approach this authority through a complaint for the recovery of the interest on account of delay in handing over the possession.

XVI. That the present complaint has been filed by the complainants without prejudice to claim further damages suffered by the complainants on account of inordinate delay committed by the respondent in handing over the possession of the allotted apartment to the complainants, by filing their claim before the "Adjudicating Officer" appointed under the Act 2016.

C. **Relief sought by the complainants:**

4. The complainants have sought following relief(s).

   I. Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the promissory date of delivery till actual delivery of the unit in question.

   II. Direct the respondent to handover the legal possession of the apartment to the complainants. Further, the respondent may also be directed to get the conveyance deed registered in favour of the complainants.

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 contested the complaint on the following grounds: -

   a) That the complainants after checking the veracity of the project namely, 'Raheja Revanta' has applied for allotment of the apartment in the said project. In view of application form dated 05.02.2012, the complainants were allotted unit bearing IF8-02 on the 1st floor in independent floors 8, in the aforesaid project vide provisional allotment letter dated 23.05.2012. The complainants consciously and willfully opted for a construction linked payment plan for remittance of the total sale consideration for the subject unit and further, represented that he shall remit every installment on time as per the payment schedule. The respondent has no reason to suspect

the *bonafide* of the complainants and proceeded to allot the subject unit in their favor.

b) That the complainants have no cause of action to file the present complaint as the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement to sell dated 23.05.2012 entered between the respondent and the complainants. It is further submitted that the complainants are investors and booked the unit in question to yield gainful returns by selling the same in the open market. The complainants have filed the present purported complaint to wriggle out of the agreement. The complainants do not come under section 2(d) of the Act, as the complainants are investors and booked the unit in order to enjoy the good returns from the project.

c) That the complainants were well aware of the terms and conditions as stated in clause 22 & 23 which states that the said project falls within the new master plan of Gurgaon and the site of the project may not have the infrastructure in place as on the date of booking or even at the time of handing over of possession as the same is to be provided/ developed by the government/nominated government agency. Further the purchasers/complainants have also agreed and accepted that construction/ continuation / completion of the said building/ complex is subject to force majeure conditions which inter-alia include strike, lock out or, non-availability of necessary infrastructure facilities being provided by the government for carrying development activities.

d) That the complainants were also affirmed to clause 6 that they have been provided all information and clarifications in deciding to apply for allotment and purchase of the said unit.

e) That it is pertinent to mention that the application form and the allotment letter were the preliminary draft containing the basic and primary understanding between both the parties. That the application form and the allotment letter being the initial documents, which were just an understanding document, executed between the parties, to be followed by the agreement to sell, to be executed between the parties. After the initial documents, both the parties fulfilled certain documentation and procedures and after fulfilling the same, the agreement to sell was issued dated 23.05.2012 in favour of the complainants allotting the desired unit bearing no. IF8-02, 1st floor in independent floors 8, in the said project. The agreement to sell was executed between the parties which contained the final understandings between the parties stipulating all the rights and obligations.

f) That the complainants were made aware by virtue of the clause 4.3 and 4.4 of the agreement to sell. As per said clause(s) of agreement to sale, the period of 36 months for completion of construction of the said unit was contingent on providing the necessary infrastructure in the sector of the government force measure conditions.

g) That despite the respondent fulfilling all its obligation as per the provision laid down by law, the government has failed miserably to provide essential basic infrastructure facilities such as roads, sewerage lines, water, and electricity supply on the sector where the said project is being developed. The development of roads,

sewerage, laying down off water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including external development charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60 meters sector road including 24 meters wide road connectivity, water and sewage which was supposed to be developed parallelly with HUDA has not been developed.

h) That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the government authorities. It is submitted that non available process structure facilities beyond the control of the respondent and the same also falls within the ambit of definition of force majeure conditions as stipulated in clause 4.4 of the builder buyer agreement to sell.

i) That the respondent also filed RTI application for seeking information about the status of the basic services such as roads, sewerage, water, and electricity. Thereafter, the respondent received reply from HSVP wherein, it was clearly stated that no external infrastructure facilities have been laid down by the concerned governmental agencies. The respondent cannot be blamed in any manner on account of inaction and failure on the part of the governmental authorities.

j) That furthermore two high tension (HT) cables lines were passing through the project site which were clearly shown and visible in the

zoning plan dated 06.06.2011. The respondent required to get these HT lines removed and relocate such the opposite party proposed the plan of shifting the overhead HT wires to underground and submitted building plan to DTCP, Haryana for approval, which was approved by DTCP, Haryana. The HT lines have been put underground in the revised zoning plan. The fact that two 66KV HT lines were passing over the project land was intimated to all the allottees as well as the complainants. The respondent requested to M/s KEI Industries Ltd for shifting of the 66 KV S/C Gurgaon to Manesar line for overhead to underground Revanta Project Gurgaon vide letter dated 01.10.2013. That the HVPL took more than one year in giving the approval and commissioning of shifting of both the 66KV HT lines. It was certified by HVPL Manesar that the work of construction for laying of 66 KV S/C & D/C 1200, XLPE cable (aluminium) of 66 KV S/C Gurgaon-Manesar line and 66 KV D/C Badshapur-Manesar line has been converted into 66 KV underground power cable in the land of the opposite party's project which was executed & completed successfully by M/s KEI Industries Ltd and 66 KV D/C Badshapur-Manesar line was commissioned on 29.03.2015. Thereafter, HVPNL, Gurgaon issued the performance certificate for the same to the opposite party dated 14.06.2017.

k) That the respondent got the overhead wires shifted underground at its own cost and only after adopting all necessary processes and procedures and handed over the same to the HVPNL and the same was brought to the notice of District Town Planner vide letter dated 28.10.2014. Multiple government and regulatory agencies and their clearances were in involved/required and frequent shut down of HT supplies was involved, it took considerable time/efforts, investment

and resources which falls within the ambit of the force majeure condition. The respondent has done its level best to ensure that the complex is constructed in the best interest and safety of the prospective buyers.

l) That the respondent during such time when all such procedure and process were taking place, concurrently some amendments took placed in Haryana Fire Safety Act, 2009 due to which it was further technically advised and mandated to have additional service floors/fire refuge area in the high-rise tower as additional safety norms, to which the respondent complied in letter and spirit. And revision of zoning plan, the respondent applied for revision of building plan incorporating all the advised changes and left-over area due to overhead HT wires which was to be built and shown as to be shower and presented in first/original building and marketing plan. The application for revision of building plans was made vide application dated 14.01.2016 to DTCP, Haryana as per initiated committed project layout and design only. Pursuant to such application the DTCP, Haryana was pleased to revise the building plan in conformity with revised zoning plan.

m) That without prejudice to aforesaid submissions, if any, in the project has been due to the delay in grant of the necessary approvals by the competent authorities that were beyond the control of the respondent. The respondent has made best possible endeavour and all efforts at every stage to diligently follow with the competent authorities for the concerned approvals. In fact, it is in the interest of the respondent too to complete the project as early as possible and handover the possession to the complainants. However, much against the normal practice and expectations of the respondent, at

every stage, each division of the concerned authority has taken time, which was beyond normal course and practice. That the construction of the structure in which the apartment is located is complete and all the block work and the gypsum has also been completed. As per the RERA, Haryana (Real Estate Regulatory Authority) the completion date of the project is June,2022.

n) That the construction of the tower in which the floor is allotted to the complainants is allocated already complete and the respondent shall hand over the possession of the same to the complainants after getting occupational certificate subject to the complainants making the payments of the sue instalments amounts as per the terms of the application and agreement to sell.

o) That the said project is one of the most iconic skyscrapers in the making, a passionately designed and executed project having many firsts and is the tallest building in the Haryana with highest infinity pool and club in India. The scale of the project required a very in-depth scientific study and analysis, be it earthquake, fire, wind tunnelling façade solutions, landscape management, traffic management, environment sustainability, services optimization for customer comfort and public health as well, luxury and iconic elements that together make it a dream project for customers and the developers alike. The world best consultants and contractors were brought together such as Thornton Tomasetti (USA) who are credited with dispensing world's best structure such as Petronas Towers (Malaysia), Taipei 101 (Taiwan), Kingdom Tower Jeddah (world's tallest under construction building in Saudi Arabia) and Arabtec makers of Burj Khalifa, Dubai (presently tallest in the world), Emirates palace etc.

p) That the compatible quality infrastructure (external) was required to be able to sustain internal infrastructure and facilities for such an iconic project requiring facilities and service for over 4000 residents and 1200 cars which cannot be offered for possession without integration of external infrastructure for basic human life be it availability and continuity of services in terms of clean water, continued fail safe quality electricity, fire safety, movement of fire tenders, lifts, waste and sewerage processing and disposal, traffic management etc. Keeping every aspect in the mind this iconic complex was conceived as a mixture of tallest high-rise tower & low-rise apartment blocks with a bonafide hope and belief that having realized all the statutory changes and license, the government will construct and complete its part of roads and basic infrastructure facilities on time. Every customer including the respondent cannot develop external infrastructure as land acquisition for roads, sewerage, water, and electricity supply is beyond the control of the respondent. Therefore, as an abundant precaution, the respondent company while hedging the delay risk on price offered made an honest disclosure in the application form itself in clause no. 5 of the terms and conditions.

q) That the complainants, after checking the veracity of the project namely, "Raheja Revanta" at Sector-78, Gurgaon, Haryana has applied for the allotment of apartment by his booking application form. The complainants agreed by his booking application form. The complainants agreed to be bound by the terms and conditions of the booking application form. The complainants were aware from the very inception that the plans are approved by the concern authorities attentive nature and the respondent might have to effect

suitable unnecessary alternations in the layout plan as and when required.

r) That the possession of the unit is supposed to be offered to the complainants in accordance with the agreed terms and condition of the buyer's agreement. It is submitted that clause 4.2 of the agreement to sell states that :

> *"that the seller shell sincerely and ever to give possession of the unit to the purchaser within 36 months in respect of 'TAPAS' Independent Floors and 48 months in respect of 'SURYA TOWER' from the date of the execution of the agreement to sell and after providing with necessary infru success specially road sewer saver and water in the sector/to the complex by the government but subject to force measure conditions or any government /regulatory authority's action, in action or omission and reasons beyond the control of the seller will stop however the seller shall be entitled for compensation free grace period of six months in case of construction is not completed within a time period mentioned above...."*

That the use of expression 'endeavour to give the position' in clause 4.2 of the buyer's agreement clearly shows that the company has nearly held out a hope that it will try to give the possession to the Complainants within the specified time. However, no unequivocal promise was made to the prospective buyers the possession of the unit will be delivered at the end of a particular period.

s) Furthermore, it is pertinent to mention herein have that the complaint was aware as also stated in clause 22 of the booking application form and clause 4.3 of the agreement to sell that:

> *"the set project falls within the new master plan of Gurgaon and the site of the project many not have the infrastructure in place as*

on the date of booking or event at the time of handing over the position as the same is to be provided/developed by the government/nominated agency. Since this is beyond the control of the seller, therefore, the purchaser shall not claim any compensation for delay due to the non provision of infrastructure facilities and/or consequent delay in handing over the possession of the unit(s)in the project".

Therefore, in the view of the aforesaid clauses, it is evident that period of 36 months for completion of the construction of the said unit was contingent on providing of the necessary infrastructure in the sector by government and subject to force measure conditions.

t) That the time period for calculating the due date of possessions and start only when the necessary approvals will be provided by the government authorities and the same was known to the complaint from the very inception. It is submitted that non availability of the occupational certificate is beyond the control of the respondent and the same also falls within the ambit off the definition force majeure condition as stipulated in clause 4.4 of the agreement to sell.

u) That is pertinent to mention herein that the construction of the tower is which the unit allotted to the complainants is located is 80% complete and the respondent will hand-over the position of the same to the complainants after its completion subject to making the payment of the instalments amount and on availability of infrastructure facilities such as sector roads and laying providing basic external infrastructure as per the terms of the application and agreement to sell. It is submitted that due to the above-mentioned conditions which were beyond the reasonable control of the respondent, the construction of the project is not completed, and the

respondent cannot be held liable for the same. The respondent is also suffering unnecessarily without any fault on its part. Due to these reasons the respondent has to face cost overruns without its fault. Under these circumstances passing any adverse order respondent at this stage would amount to complete travesty of justice.

v) That GMDA, Office of Engineers-VI, Gurugram vide letter date 03.12.2019 has intimated to the respondent company that the land of sector dividing road 77/78 has not been acquired and sewer line has not been laid.

w) That the respondent has written on several occasions to the Gurugram Metropolitan Development Authority (GMDA) to expedite the provisioning of the infrastructure facilities at the project site so that the possession can be handed over to the allottees. However, the authorities paid no heed or request till date.

x) That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project:

- Time and again various orders has been passed by the NGT staying the construction. It is pertinent to note that the construction of the project was further delayed on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. Vide order dated 20.07.2016, NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took

some time for mobilization of the work by various agencies employed with the respondent.

- The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in the NCR region. That the projects of not only the respondent but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the project is beyond the control of any of the developers.
- Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown even though the NCR region was itself facing a huge demand for labour to complete the projects. Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the respondent has no control whatsoever.
- Shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- In addition, the current government declared demonetization on 08.11.2016 which severely impacted the operations and project execution on the site as the labours in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there

was a huge chaos which ensued and resulted in the labours not accepting demonetized currency after demonetization.

- In July 2017, the Government of India further introduced a new regime of taxation by the name of Goods and Service Tax which further created chaos and confusion owning to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.
- That there was a delay in the project on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allotees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- Then the developers were struck hard by the two consecutive waves of the covid-19, because of which the construction work completely came to halt. Furthermore, there was shortage of labour as well as the capital flow in the market due to the sudden lockdown imposed by the government.
- Lately, the work has been severely impacted by the ongoing famers protest in the NCR as the farmers protest has caused huge blockade on the highway due to which ingress and egress of the commercial vehicles carrying the raw materials has been

extremely difficult, thereby bringing the situation not in the control of the developers and thus, constitutes a part of the force majeure.

y) Further, to be noted that the country again faced 2nd wave of covid-19 because of which again a partial lockdown was imposed for a period of two months by the state government which again led to the postponement in the completion of the project. In view of all the above submissions, it is pertinent to mention that the Respondent is on time to complete the said project and is almost on the verge of completion with fit-outs and the finishing of the project in due. That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to Covid-19.

z) That the compensation in the form of interest on delayed possession to be paid by the respondent to the complainants at this crucial juncture would bring a bad name to the goodwill of the entire company and will create a bad precedent which would eventually lead to an array of similarly filed frivolous and vexatious complaints asking for a similar relief, leaving the respondent without any funds to carry on the completion of the project and would further go bankrupt. The respondent itself has infused huge sum of funds into the project so that the project could be completed on time. Despite force majeure conditions the respondent has made all the efforts in order to complete the project in time. Further, the complainants have also concealed from this authority that the respondent being a customer centric company has always addressed the concerns of the complainants and has requested the complainants telephonically

time and again to visit the office of the respondent to amicably resolve the concerns of the complainants.

aa) That the respondent had from time to time obtained various licenses and approvals and sanctions along with permits. Evidently respondent had to obtain all licenses and permits in time before starting construction. Furthermore, after the introduction of the authority, Gurgaon the respondent applied for the approval of the same which was granted and approved after paying the composite fee by the respondent.

bb) That it is trite law that the terms of the agreement are binding between the parties. The Hon'ble Supreme Court in the case of ***"Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704"*** observed that that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the singed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

cc) That the complainants, thus, have approached the authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the purported Complainant would not have arisen. It is settled law as held by the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu v.***

Jagannath 1994 (1) SCC (1) that "non-disclosure of material facts and documents amounts to a fraud on not only on the opposite parties but also on the court". Reference may also be made to the decisions of the Hon'ble Supreme Court in ***Dilip Singh Vs State of UP 2010 (2) SCC (114)*** and ***Amar Singh Vs Union of India 2011 (7) SCC (69)*** which is also been followed by the Hon'ble National Commission in the case of ***Tata Motors Vs Baba Huzoor Maharaj*** being RP No. 2562 of 2012 decided on 25.09.2013.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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;*
>
> ***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.*

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

F. Findings on the objections raised by the respondents

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

12. 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 buyer and they have paid total price of **Rs.1,32,65,261** /-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;"*

13. 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 investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

F. II Objection regarding the delay in payment

14. The objection raised by the respondent regarding delay in payment by many customers is totally invalid because the allottees have already paid the amount of Rs.1,32,65,261/- against the total sale consideration of Rs.1,49,22,383/- to the respondent. The complainants have already paid more than 89% of the total amount and the balance amount is payable on application of occupation certificate or the receipt of the occupation certificate. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainants in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainants have paid all the installments as per payment plan duly agreed upon by the complainants while signing the agreement and the same is evident from statement of account dated 22.05.2020 on page no. 121 to 125 of the complaint. The respondent has not gone through

the facts of the complaint carefully. Moreover, the stake of all the allottees cannot put on stake on account of non-payment of due installments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

F.III Objection raised by the respondent regarding force majeure condition: -

15. The obligation to handover possession within a period of thirty-six months was not fulfilled. There is delay on the part of the respondent the actual date to handover the possession in the year 2015 and various reasons given by the respondent is totally null and void as the due date of possession was in the year 2015 and the NGT Order refereed by the respondent pertaining to year 2016 therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals. The following reasons are given by the respondent: - (1) NGT Order (2) shortage of labour (3) lack of infrastructural support from state government (4) shortage of bricks in region (5) Demonetization (6) GST (7) Covid- 19 (8) farmers protest (9) delay in approval by the state government (10). delay in payments by many customers.

16. The due date of possession in the present case as per clause 4.2 is 23.05.2015, therefore any situation or circumstances which could have a reason prior to this date due to which the respondent could not carry out the construction activities in the project are allowing to be taken into consideration. While considering whether the said situation or circumstances was in fact beyond the control of the respondent and

hence the respondent is entitled to force majeure clause 4.4, however all the pleas taken by the respondent to plead the force majeure condition happened after 23.05.2015. the respondent has not given any specific details with regard to delay in payment of instalments by many allottees or regarding the dispute with contractor. Even no date of any such order has been given. Similar is the position with regard to the alleged lack of infrastructure support by the state government. So far as farmers protest, NGT order and demonetization of Rs. 500/- and Rs. 1000/- currency notes are concerned these events are stated to have taken pleas in the year 2015 and 2016 i.e., the post due delivery of possession of the apartment to the complainants.

17. Accordingly, authority holds that the respondent is not entitled to invoke clause 4.4 delay with force majeure condition.

G. Findings on the relief sought by the complainants.

G. I Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the promissory date of delivery till actual delivery of the unit in question.

18. 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."*

19. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

> **4.2 Possession Time and Compensation**
> *That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser* ***within thirty-six (36) months in respect of 'TAPAS' Independent Floors*** *and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller.* ***However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.*** *The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its

meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his 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.

21. **Admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by May 2015. As per agreement to sell, the construction of the project was to be completed by May 2015 which is not complete till date. It may be further stated that asking for the extension of time in completing the construction is not a statutory right nor has it been provided in the rules. Accordingly, in the present case this grace period of 6 months cannot be allowed to the promoter at this stage.

22. **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.*

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

24. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- 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 instalment 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 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

25. 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., 21.04.2022 is **7.40%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.40%.**

26. 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;"

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **9.40%** by the respondent /promoter which is the same as is being granted her in case of delayed possession charges.

G.II Direct the respondent to handover the legal possession of the apartment to the complainants. Further, the respondent may also be directed to get the conveyance deed registered in favour of the complainants.

28. The respondent is directed to make a valid offer of possession and handover the physical possession to the complainants after obtaining occupation certificate from the competent authority. Further, the complainants are seeking relief of execution of conveyance deed. Clause 11 of unit buyer's agreement provides for 'conveyance of the plot' and is reproduced below:

ARTICLE 11. CONVEYANCE DEED:

11.1 Stamp Duty and Registration Charges

"The stamp duty, registration fee/charges and other expenses to be incurred at the time of the Conveyance Deed in pursuance to this Application from and the agreement to sell shall be born by the purchaser.

11.2 Transfer intimation and Clearance

The purchaser can sell, assign, transfer, lease or pert with possession of the unit but with prior intimation to the Seller. In such an event, except in sale, it shall be the responsibility of the purchaser to continue to pay the charges including maintenance and electricity etc.....

11.3 Execution of Conveyance Deed

That the parties shall undertake to execute the Conveyance Deed within sixty (60) days from the date of intimation in writing by the Seller to the purchaser about the receipt of the certificate for use and occupation of the said complex from the competent authority and after filling of the declaration deed, subject to the payment by

the purchaser to the seller the Sale consideration and all other dues in terms of the payment plan.

In case of the Purchaser who has opted for long term payment plan arrangement with any financial Institutions/Banks, the conveyance of the unit in favour of the purchaser shall be executed only upon the Seller receiving No Objection Certificate from such Financial Institution as per the terms and conditions as agreed between the parties."

29. The authority has gone through the conveyance clause of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

*"**Section 17: - Transfer of title***

17(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

30. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining part completion certificate from the competent authority. On successful procurement of it, offer a valid make

of possession to the complainant and execute the conveyance deed within 3 months from the date of obtaining the completion certificate.

31. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement executed between the parties on 23.05.2012, the possession of the subject apartment was to be delivered within 36 months from the date of agreement to sell. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession was 23.05.2015. 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement to sell dated 23.05.2012 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent

is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 9.40% p.a. w.e.f. 23.05.2015 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

33. 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 9.40% p.a. for every month of delay from the due date of possession i.e., 23.05.2015 till the handing over of possession of the allotted unit through a valid offer of possession after obtaining the occupation certificate from the competent authority.

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

iii. The arrears of such interest accrued from 23.05.2015 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;

iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.40% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.

34. Complaint stands disposed of.

35. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.04.2022