PROCEEDINGS OF THE DAY	57
Day and Date	Thursday and 21.04.2022
Complaint No.	CR/4700/2021 Case titled as Prageeth Kumar VS Ramprastha Promoters and Developers Private Limited
Complainant	Prageeth Kumar
Represented through	Shri Nilotpal Shyam Advocate
Respondent	Ramprastha Promoters and Developers Private Limited
Respondent Represented	Shri Navneet Kumar Advocate
Last date of hearing	04.02.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings through VC

The present complaint has been received on 03.12.2021 and the reply on behalf of respondent was received on 15.02.2022. On the last date of hearing i.e., 04.02.2022, the respondent/promoter was directed to maintain the status-quo with regard to the subject unit of the complaint till further directions of the authority.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	Particulars	Details
1.	Name of the project	"The Edge Tower", Sector- 37D, Gurugram
2.	Unit no.	N-1201, on 12th floor, tower-N (Page no. 43 of the complaint)
3.	Unit area admeasuring	1675 sq. ft. (Page no. 43 of the complaint)

4.	Increased unit area	1770 sq. ft. (Page no. 76 of the complaint)
5.	Date of builder buyer agreement	02.02.2010 (Page no. 39 of the complaint)
6.	Possession clause	**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. **(emphasis supplied)**
7.	Due date of possession	31.08.2012 (As mentioned in the possession clause)
8.	Total sale consideration	Rs.48,31,125/- (As per schedule of payment page no. 69 of the complaint)

9.	Amount paid by the complainants	Rs.44,38,497/- (As per statement of account on page no. 76 of the complaint)
10.	Occupation certificate	13.02.2020
11.	Offer of possession without obtaining occupation certificate	18.10.2019 (As per page no. 88 of complaint)
12.	Re-offer of possession after obtaining occupation certificate	23.02.2021 (Page no. 90 of complaint)
14.	Grace period	Since the grace period utilization is subject to condition of applying and obtaining of the occupation certificate in respect of the group housing complex. But upon perusal of documents on record, the respondent has applied for occupation certificate vide application dated 17.07.2019. Therefore, no such grace period of 180 days can be entitled to the promoter.

The complainants have sought following relief:

1. **To set aside the cancellation of the booking of the impugned unit done by the respondent company vide email dated 25.11.2021;**

Vide order dated 04.02.2022, the authority had directed the respondent/builder to maintain the status- quo with regard to the subject unit till further direction. As per documents placed on record, the respondent vide letter dated 27.11.2021 cancelled the subject unit of the complainants on account of non-payment of the demand raised in respect of the booking amount. The respondent issued a reminder letter for default of payment dated 20.09.2021 (page no. 101 of the complaint) for non-payment of such booking amount of Rs.11,39,966/- and holding charges of Rs.1,33,670/-. The matter needs detailed discussion. A final reminder dated 21.10.2021 was also sent in this regard. There has been a delay of more than 9 years in handing over the

possession. The Hon'ble Supreme Court has also observed in many cases that in case of delay in projects, the allottee cannot be forced to make payments when he is not sure about the possession. However, the respondent is directed not to demand holding charges from the complainants/allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

The authority observed that the complainants have already paid substantial amount of money in respect of the subject unit. The complainants have paid 44,38,497/- against the total sale consideration of Rs.48,31,125/-. Furthermore, the complainants submitted that they are ready and willing to pay the outstanding dues and take possession of the subject unit.

In view of the above, the authority directs the complainants to pay outstanding dues along with interest at the prescribed rate within 30 days, if any after adjustment of delayed possession charges failing which the respondent/builder shall be entitled to cancel the subject unit.

2. **Direct the respondent to immediately deliver the possession of impugned unit no. N-1201, Edge Tower, Ramprastha City, Gurugram to the complainant by revoking illegal demands and adjusting the amount due with the amount of interest payable.**

3. **Direct the respondent company to pay interest at the prescribed rate (MCLR + 2%) for delayed period of handing over of the possession calculated from the date of delivery of possession as mentioned in the ABA i.e., from 31.08.2012 till the actual date of handing over of the possession impugned unit.**

4. **Direct the respondent to adjust the demand raised by the respondent company in the final demand raised by the respondent company.**

Validity of offer of possession

It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The

corrected vide order dated 16.5.2022

authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

i. Possession must be offered after obtaining occupation certificate;

ii. The subject unit should be in habitable condition;

iii. Possession should not be accompanied by unreasonable additional demands.

In the present case, the respondent offered the possession of the allotted unit to the complainants on 18.10.2019, but till date no occupation certificate with regard to tower N, in which the unit of the allottee is allotted. Since the first condition to a valid offer of possession is not satisfied, therefore, the said offer of possession cannot be regarded as a valid offer of possession. The OC for tower N was obtained on 13.02.2020 and subsequently an offer of possession was made on 23.02.2021. Therefore, the first condition among three essentials for a valid offer of possession.

There is no objection raised by the complainant that the said unit is unhabitable, therefore, it is presumed that the allotted unit since offered after obtaining required sanctions is in habitable condition.

The said offer of possession vide email dated 23.02.2021, is accompanied by a statement of account placed on page no. 76-77 of the complaint. As per the said statement an amount of Rs. 1,44,462/- is charged against holding charges. The respondent shall not charge holding charges from the complainants at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020.

Considering the above-mentioned facts, the due date of possession as per clause 15 (a)of the apartment buyer's agreement was to be delivered within stipulated time i.e., by 31.08.2012.

There is delay on part of the respondent in handing over of the possession of the allotted unit. Accordingly, the complainants are entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e. ~~9.30%~~ 9.40% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e. 31.08.2012 till offer of possession i.e. 23.02.2021 plus two months which comes out to be 23.04.2021.

5. Direct the respondent to set aside the demand raised by the respondent company with regard to increase in super area of the impugned unit no. N-1201.

An apartment buyer agreement dated 02.02.2010, the complainants were allotted the subject unit of the complaint i.e., N-1201 and the area of the subject unit was 1675 sq. ft. which was later increased to 1770 sq. ft. There is an increase of 95 sq. ft. which constituting 5.67% of original area. As per statement of account on page no. 76-77 of complaint, a total amount of Rs. 2,23,250/- was increased on account of such increase in area of the apartment.

As per clause 7(e) of said agreement, in case if alteration is less than 10%, the allottee shall be under obligation to make payment of such increase in super area within 30 days of the dispatch of such notice by the respondent company. The said clause of the agreement is reproduced hereunder: -

> *7(e) In case of any alteration/modification resulting in less than 10% increase in Super Area, RAMPRASTHA shall not be obliged to take any consent from the Allottee The Allottee agrees and acknowledges that he/she/ they it shall be obliged to make payments for such increase in Super Area within thirty (30) days of the date dispatch of such notice by RAMPRASTHA,*

Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 1675 sq. ft. to 1770 sq. ft. without any prior intimation and justification. The respondent, therefore, is entitled to charge for the same at the agreed rates since the increase in area is 95 sq. ft. which is less than 10%. However, this remain subject to the conditions that the flats and other components of the super area on the project have been constructed in accordance with the plans approved by the competent authorities.

6. Direct the respondent to set aside the demand raised by the respondent company with regard to electricity meter charges, electricity supply and installation charges, water connection charges, FTTH.

Electricity Meter Charges, Electricity Supply, Water Connection Charges: As per statement of account on page no. 76-77 of the complaint, the respondent has charged an amount of Rs.41,772/- towards water connection charges, Rs.1,04,430/- towards electricity supply and installation charges and Rs. 12,980/- towards electricity meter charges.

As per clause 11(d) of agreement dated 02.02.2010, the complainants shall pay applicable charges on account of electricity charges and water charges. The said clause of the agreement is reproduced hereunder: -

> *11.*
> *d) Electricity, Water and Sewerage Charges*
> *The electricity, water and sewerage charges as applicable shall be borne and paid by the Allottee(s):*
> *(i) The Allottee undertakes to pay additionally to RAMPRASTHA on demand the actual cost of the electricity, water and sewer consumption charges and/or any other charge which may be payable in respect of the same Apartment.*
> *(ii) The Allottee undertakes that it shall not apply to Haryana Vidyut Prasaran Nigam Limited or any other electricity supply company in his individual capacity for receiving any additional load of electricity other than that being provided by the nominated maintenance agency.*

It is to be noted that the said clause deals with charges applicable on consumption basis but there is no specific clause dealing with one-time charges dealing with installation charges, etc.

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

FTTH: - Not pressed during the hearing by the counsel of the complainant.

7. Direct the respondent to set aside the demand raised by the respondent company with regards to the maintenance charges.

As alleged by the complainant on page no. 20 of the complaint, the respondent has charged six months advance payment towards maintenance charges and the said payment to be made in favour of M/s Arrow Inframart Private Limited. As per clause 22 of the said agreement the complainants must enter into a separate agreement for the maintenance of the group housing complex and shall be obligated to pay maintenance charges to said agency. The relevant part of the agreement is reproduced for ready reference: -

"a. The Allottee hereby agrees and undertakes that he/she/they it shall enter into a separate tripartite maintenance agreement to be provided by RAMPRASTHA with the maintenance agency as may be appointed or nominated by RAMPRASTHA for the maintenance of the Group Housing Complex and the common areas therein (Maintenance Agreement)
b. The Allottee agrees and undertakes to execute the said Maintenance Agreement with the maintenance agency identified nominated and/or appointed by RAMPRASTHA. The Allottee further agrees and undertakes to pay the indicative and approximate maintenance charges as may be levied by the maintenance agency for the upkeep and maintenance of the Group Housing Complex, its common areas, utilities, equipment stated in the Group Housing Complex and such these facilities forming part of the Property
c. In addition to the payment of the maintenance charges to be paid by the Allottees (s), the Allottees agrees and undertakes to pay interest free maintenance advance @ Re 50-persq ft on the basis of the Super Ares as provided in the Maintenance Agreement."

It is to be noted that as per statement of account raised by the respondent with offer of possession there are IFMS charges charged @ Rs. 50 per sq. ft. and the same is in consonance of clause 22(c) of agreement dated 02.02.2010 and no charges have been charged on account of maintenance charges. Therefore, as per clause 22(c) of the buyer's agreement, the complainant has agreed to pay IFMS charges. The authority directs the complainant to pay the IFMS charges as per the buyer's agreement.

8. Direct the respondent company to pay a cost of Rs. 1,00,000/- towards the cost of the litigation.

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 allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

Complaint stand disposed of. Detailed order will follow. File consigned to the registry.

V.I-

Vijay Kumar Goyal
Member

Dr. KK Khandelwal
Chairman
21.04.2022

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**4700 of 2021**
First date of hearing:		**04.02.2022**
Date of decision	**:**	**21.04.2022**

1. Mr. Prageeth Kumar
2. Mrs. Jurate Vysniauskaite Kumar
Through POA Sh. Prasanna Kumar Padakaseri Naryana
Both RR/o: - BF5, Harmony Enclave, Kunjan Bava Road, Reliance Fresh, Vytilla, Ernakulam, Kerala-682019 **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. Nilotpal Shyam (Advocate) Complainants
Ms. R. Gayatri Mansa (Advocate) Respondent

ORDER

1. The present complaint dated 03.12.2021 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

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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 DTCP Haryana
6.	RERA Registered/ not registered	**Registered vide no. 279 of 2017 dated 09.10.2017 (Tower No. A to G, N and O)**
7.	RERA registration valid up to	31.12.2018
8.	**Extension RERA registration**	EXT/98/2019 dated 12.06.2019
9.	**Extension RERA registration valid upto**	31.12.2019
10.	Unit no.	N- 1201, 12th floor, tower N

		[Page no.43 of the complaint]
11.	Unit measuring	1675 sq. ft. [Super area]
12.	Revised unit area	1770 sq. ft. [Page no 76 of the complaint]
13.	Date of execution of apartment buyer's agreement	02.02.2010 [Page no. 39 of the complaint]
14.	Payment plan	Construction linked payment plan. [Page no.68 of the complaint]
15.	Total consideration	Rs.48,31,125/- [as per schedule of payment page no. 68 of complaint]
16.	Total amount paid by the complainants	Rs.44,38,497/- [as per statement of account page no. 76 of the complaint]
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. 54 of complaint]	31.08.2012 [Note: - 120 days grace period is not allowed]
18.	Details of occupation certificate if any	Date of OC granted, if any, by the competent Authority: Dated 13.02.2020 Area/Tower for which OC obtained- N
19.	Offer of possession without obtaining occupation certificate	18.10.2019 (Page 88 of the complaint)
20.	Re-Offer of possession after obtaining the	23.02.2021

	occupation certificate	(Page no.90 of the complaint)
21.	Delay in handing over possession w.e.f. 31.08.2012 (Due date of handing over possession) till 23.04.2021 i.e., date of offer of possession (23.02.2021) + 2 months	8 years 7 months and 23 days

B. Facts of the complaint

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

I. That the complainants are respected citizen of India and respondents' company through their representatives had approached the complainants and represented that the respondent company township project namely "The Edge Tower" situated at sector-37D, Gurugram, Haryana (hereinafter referred to as "said project") will effectively serve the purpose of complainants as it has best of the amenities.

II. That the respondent company claimed that they have obtained license from the Director General, Town & Country Planning, Haryana (DGTCP) for development of the project land into group housing complex vide memo no. 33 of 2008 dated 19.02.2008 comprising of multi-storied residential apartments in accordance with law.

III. That pursuant to the booking, the complainants were allotted unit no. N- 1201, admeasuring 1675 sq. feet along with one parking in the said project located at Ramprastha City, Sector-37D, Gurugram (hereinafter referred to as "said unit") for total sale consideration of Rs.48,31,125/-.

IV. That both the parties entered into an apartment buyer's agreement dated 02.02.2010 for the sale of said unit.

V. That respondent agreed to sell/convey/transfer the said unit for an amount of Rs.48,31,125/- which includes basic sale price, car parking charges, external development charges and infrastructure development charges, preferential location charges plus applicable taxes. The complainants have already paid a sum of Rs.44,38,497/- towards the sale consideration in respect of the said unit.

VI. That the buyer's agreement is a standard form of agreement which is biased, one sided, amounting to unfair trade practice as the complainants were compelled to sign on dotted lines in view of one-sided standard form of contract i.e., ABA. Therefore, it is not binding on the complainants in view of the judgment of Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd.* V. *Geetu Gidwani Verma and Anr.* CA No. 1677 of 2019 judgment dated 04/02/2019** wherein the Hon'ble Apex Court.

VII. That the buyer's agreement signed between both the parties is a standard form of contract which was signed by every other

allottees wherein there was no option to the complainants but to sign on the dotted lines on a contract which was framed by the builder with no room for any negotiation whatsoever. The complainants crave leave of authority to rely on specific clauses of the ABA to substantiate it further at the time of oral hearing.

VIII. That as per clause 15(a) of the agreement, the respondent was obligated to offer the possession of the unit to them by 31.12.2012 plus grace period of 120 days for applying and obtaining the occupation certificate in respect of the housing complex. Further, as per clause 14 of said ABA also stipulated a penal interest @ 1.5% per month (18% per annum compounded) for any delay in payment of installments made by the complainants. The ABA further stipulates under clause 17 that respondent company, if failed to deliver the possession of the impugned unit within 6 months from the date of intimation of possession by them (it may further extend to grace period of 120 days) and subject to the *force majeure* conditions shall pay compensation @ Rs.5/- per sq. ft. of the super area per month for the entire period till the date of handing over the possession. In other words, the respondent company shall be liable for delay in possession after 10 months from the date of intimation of such possession as may be made by them depending upon their own sweet will. The said compensation clause is *ex facie* discriminatory in comparison to clause 14(a) of the ABA and

amounts to unfair trade practices in view of catena of judgments of National Consumer Disputes Redressal Commission. Further, the said compensation clause is also in direct conflict with the Act, 2016 and rules made there -under. Therefore, the clause 17 of ABA is *non est*in law in view of the fact that it is repugnant to the explicit statutory provision and to that extant clause 17 is severable from other clauses of ABA in accordance with clause 30 of the ABA. Further, it is noteworthy that said clause of ABA is part of standard form of agreement, which is biased, one sided, amounting to unfair trade practice as the complainants were compelled to sign on dotted lines in view of one-sided standard form of agreement i.e., ABA. Therefore, such discriminatory clause is not binding on the complainants in view of the judgment of Hon'ble Supreme Court. The complainants crave leave of authority to produce and rely upon relevant judgments at the time of oral hearing as may be required.

IX. That the complainants have paid majority of the total sale consideration as demanded by the respondent in the year November 2012 itself. Despite the said payments, the respondent has failed to deliver the possession in agreed timeframe (i.e., 31.08.2012) for reasons best known to them and the respondent company never bothered to intimate rhymes and reasoning for the delay to the complainants. Even, the grace time period (i.e., 31.12.2012) has long ago been breached by them. Therefore, the

respondent company have the breached the sanctity of the agreement for sell i.e., ABA.

X. That the respondent company failed to handover the possession to the complainants on the agreed date (31.08.2012) or even after the elapse of the grace period of 120 days (31.12.2012) as provided under buyer's agreement. The reason for the delay in handing over the possession despite payment of more than 90% of total consideration is only best known to them as they have never bothered to intimate any rhymes and reasoning for the delay to the complainants. Therefore, the respondent company has breached the sanctity of the ABA. The respondent has deliberately maintained silence and never bothered to abreast the complainants of the latest development of the project and any rhymes and reason for such a gross and inordinate delay. Henceforth, the respondent company is liable to pay interest for delayed period of handing over the possession (i.e., from 31.08.2012) till the actual date of handing over the possession in accordance with Section 18 of the Act of 2016. It is to be mentioned that the grace period of 120 days has been mentioned without any justification, therefore, the same cannot form part of legally binding date of possession. In this regard, the judgment of Appellate Tribunal in ***Magic Eye Developers* v *Yogesh Tomer*, Appeal No. 138 of 2019** wherein it was held that prescribing the grace period without any justification is not tenable under law.

XI. That the respondent companies informed vide email dated 18.10.2019 to the complainants that the construction of the said unit is complete and accordingly it is ready to be offered for possession. Further, the respondent has also sent a statement of account with regard to pending dues and invoice for maintenance charges for six months. It is a matter of record that no occupation certificate has been granted to them till 13.02.2020 with regard to the impugned tower. However, the respondent without having occupation certificate sent said email to complainants with a malafide intent unlawfully take further money from the complainants without obtaining the occupancy certificate. Further, the respondent company vide email dated 19.02.2020 informed that occupation certificate with regard to Tower-N, Tower-P and Tower-H have been received vide Memo no. **ZP-418VolII/JD(NC)/2020/4234dated 13-02-2020.** However, the respondent company refused to either adjust delayed possession charges in the final demand or to give the possession to the complainants without prejudice to their right to claim delayed possession interest or such other relief which may be claimed at appropriate forum. Further, they have written several emails to them inter alia asking about the payment of delayed possession interest. However, the respondent did not bother reply to the queries inter alia raised by the complainants regarding the fact that even as per contractual rate of Rs.5/-per square feet per

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month of super area, the delayed possession interest payable is more than 8 lack. Thus, they have requested them to adjust the delayed possession interest in the last demand in accordance with the Act, of 2016 and offer possession to the complainants. However, the respondent has rather than following the law or at least their own ABA started threatening the complainants with invocation of holding charges as well as started maintenance if the illegal demand raised by the respondent company is not paid in Toto. The complainants kept on requesting them to address their grievance regarding delayed possession charges without any avail. It is noteworthy that the offer of possession and demand raised thereto by the respondent has doesn't provide any force majeure condition neither the respondent company in any communication detailed about any force majeure. Therefore, it is apparent that the delay of more than 7 years in obtaining the occupancy certificate from the date as promised in the ABA is solely attributable to them.

XII. That to utter surprise and dismay of the complainants, the respondent has vide emails dated 22.09.2021 rather than addressing the genuine grievance of the complainants inter alia with regard to delayed possession interest threatened to cancel the booking of the complainants and forfeit the entire amount paid. The said email is nothing but an attempt on them to extort money from the complainants as they are well aware that as per

prevailing law the respondent company is under an obligation to pay delayed possession interest at the prescribed for the delay of more than 7 years in obtaining occupancy certificate of the impugned unit. The complainants vide email dated 25.10.2021 again reiterated their stand and also willingness to take possession provided their lawful grievances are addressed and the commitment with regard to delayed possession interest is abided by the complainants. However, no reply has been received with regard to the said email till date. Thus, it is clear that due to apparent and palpable fault of the respondent company, the possession of the impugned unit could not be handed over to the complainants. Thus, the respondent company is liable to pay delayed possession interest till the actual handing over of the possession and also neither holding charges nor any maintenance charges would be payable to them, as not doing so would amount to them taking benefit of their own wrong which is not permissible under law. Further, the respondent company threaded the complainants with multiple emails as to cancellation of the said unit. In response, to it the complainants replied that they are interest to take possession of the said unit post adjustment of reaming sum. But no action has been taken by them in this regard and possession has not been offered yet.

XIII. That on perusal of statement of account sent along with the intimation of grant of the occupancy certificate, it was found that

the respondent has sent communication for six months advance maintenance charges. The said payment was to be issued in the name of M/s. Arrow Inframart Private Ltd. who has no privity of contract with complainants. That the said maintenance charge is *non est*in law as no maintenance charge can be charged from the allottee before actual handing over the possession of the unit. Further, there is no privity of contract between M/s. Arrow Inframart Private Ltd. and the complainant. Further, clause 22 of the buyer's agreement provides for execution of a tripartite agreement for maintenance of the impugned project as condition precedent for charging the maintenance charges, the said clause has not been reproduced for the sake of brevity. It is a matter of record that no such tripartite agreement has been entered till date, in such circumstances, no maintenance charges can be charged from the complainants. Therefore, the maintenance charges sought by them in the name of M/s. Arrow Inframart Pvt. Ltd has no legal sanctity and therefore, the application of said charges shall be quashed by this authority.

XIV. That the respondent company is a continuous and recurring defaulter, and no respite is available against such a recurring either on justiciable or equitable ground. Any further extension to them will amount to travesty of justice as respondent company actions seems to take in bad faith and with ill motive to misappropriate complainants hard earned money.

XV. That there is almost 7 years of unexplained and inordinate delay in handing over the possession by them to the complainants and therefore a fit case wherein authority shall order for granting possession immediately along with the interest for unreasonable delay at the prescribed rate in view of the mandatory obligation as provided under section 18 of the Act, 2016 as well as on account of the acrimony of respondent company wherein they obliterated the trust reposed on them by complainants by handing over their hard earned money always on time and in accordance with the buyer's agreement. The respondent company did not perform the required reciprocity which goes to very root of any bilateral agreement.

C. Relief sought by the complainants:

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

i. To set aside the cancellation of the booking of the subject unit done by the respondent company vide email dated 25.11.2021.

ii. Direct the respondent to immediately deliver the possession of said unit to the complainants by revoking illegal demands and adjusting the amount due with the amount of interest payable to the complainants.

iii. Direct the respondent to pay interest at the prescribed rate (MCLR + 2%) for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement i.e., from 31.08.2012 till the actual date of handing over the possession of the said unit.

iv. To set aside the demand raised by respondent with regard to increase in super area of the said unit.

v. To set aside the demand raised by respondent with regard to electricity meter charges, electricity supply and installation charges, water connection charges, FTTH.

vi. To set aside the demand raised by respondent with regard to maintenance charges.

vii. Direct the respondent to pay a cost of Rs.1,00,000/- towards the cost of the litigation.

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

D. Reply by the respondent

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

I. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.

II. That the present complaint has been filed by the complainants before this authority for possession along with interest and legal investment made by the complainants in one of the said project "The Edge Tower". That in this behalf, it is most respectfully

submitted that the authority is precluded from entertaining the present complaint due lack of jurisdiction of this authority.

III. That further no violation or contravention of the provisions of the Act, 2016 has been prima facie alleged by the complainants. That further in this behalf it is submitted that the occupation certificate has already been obtained by the respondent and the possession has been duly offered by the respondents in 2019 itself. However, it is the complainants who have despite several reminders on behalf of the respondents have miserably failed to approach the respondent to pay the balance amount and complete the documentation process. That the further there is no allegation of violation or contravention of the provisions of the Act. That the complaint is liable to be dismissed on this ground alone.

IV. That the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 has been notified on 12.09.2019 whereby inter alia amendments were made to Rule 28 and 29 of the Haryana Rules. The Rule 28 deals with the provisions related to the jurisdiction of this authority.

V. That, further the High Court of Punjab and Haryana, vide an Order dated 16.10.2020 in *Experion Developers Pvt Ltd Vs State of Haryana and Ors, CWP 38144 of 2018 and batch,* has observed as hereunder when a question was raised before the said Hon'ble High Court pertaining to the jurisdiction of the authority and the adjudicating officer with respect to the Rules, 2019.

VI. That in this context, firstly, to file a complaint before this authority within Rule 28, it is utmost crucial that *any violation or contravention of the provisions of the Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent* has been therefore alleged by the complainants. That in the present case, no such allegation has been made by the complainants which prima facie hints for a necessity for intervention of this authority. Therefore, the present case is liable to be dismissed before this authority for want of lack of cause of action and further, also the respondent cannot be held liable for an explanation when there is no such allegation of contravention.

VII. That, further, another aspect which needs attention herein is that when it comes to the part of compensation or compensation in the form of interest, the adjudicating officer shall be the sole authority to decide upon the question of the quantum of compensation to be granted. In this regard, the main excerpts of Rule 29 of the Haryana Amendment Rules, 2019.

VIII. That in this context, the judgment of the Punjab and Haryana High Court dated 16.10.2020 in *Experion Developers Pvt Ltd. (Supra),* may be referred herein.

IX. Therefore, the amendments have been upheld by the Hon'ble Punjab and Haryana High Court. That however when the same judgment dated 16.10.2020 was referred to the Hon'ble Supreme Court in ***M/s Sana Realtors Private Limited & Ors Vs Union of***

India, the Hon'ble Supreme court vide an Order dated 25.11.2020 has stayed the Order dated 16.10.2020 until further orders. The hearings are being held on a day-to-day basis and the same is still pending. It is submitted that the question of jurisdiction may kindly be deferred till the matter is finally decided by the Hon'ble Supreme Court. Therefore, in view of the stay ordered by the Hon'ble Supreme Court, in any case, these matters require an erstwhile stay keeping in view the directions of the Supreme Court.

X. That the complainants have now filed a complaint in terms of the Haryana Real Estate (Regulation & Development) Amendment Rules, 2019 under the amended Rule 28 in the amended 'Form CRA' and is seeking the relief of possession, interest, and compensation under section 18 of the Act. That it is most respectfully submitted in this behalf that the power of the appropriate Government to make rules under Section 84 of the said Act is only for the purpose of carrying out the provisions of the said Act and not to dilute, nullify or supersede any provision of the said Act.

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

and fixed and neither there was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.

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

XIII. That the complainants have not intentionally filed their personal declarations with respect to the properties owned and/or bought/sold by them at the time of booking the impugned plot and/or during the intervening period till the date of filing of the complaint and hence an adverse inference ought to be drawn against the complainants.

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

XV. Statement of objects and reasons as well as the preamble of the said Act clearly state that the Act is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. The Act, 2016 is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the complaint. The complainants are investor and not consumer and nowhere in the present complaint have the complainants pleaded as to how the complainant is consumer as defined in the consumer Protection Act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant entered into an agreement with the respondent to purchase the said apartment. The complainants are investors, who

never had any intention to buy the apartment for their own personal use and have now filed the present complaint on false and frivolous grounds. It is most respectfully submitted that this authority has no jurisdiction howsoever to entertain the present complaint as the complainants have not come to this authority with clean hands and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose and the complainant is not being a 'consumers' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986, the complaint itself is not maintainable under the Act, of 2016. This has been the consistent view of the National Consumer Disputes Redressal Commission.

XVI. Therefore, the complainants cannot be said to be genuine consumer by any standards; rather the complainants are mere investors in the futuristic project. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.

XVII. That the complainants have not approached this authority with clean hands and has concealed the material fact that the complainants are defaulters, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the

statement of account. That further, the respondent has already obtained occupancy certificate and offered possession of the property in the year 2019 itself, however till date the complainants have not come forward to accept the possession of the property and pay their balance dues. That, therefore, the default is entirely on behalf of the complainants and the respondent cannot be held responsible for the same.

XVIII. That further the Apex Court vide an order dated 11.01.2021 in *Ireo Grace Realtech (P) Ltd Vs Abhishek Khanna, 2021 (3) SCC 241,* has clearly observed that once possession has been offered along with occupation certificate, the buyer/allottee cannot deny the possession.

XIX. That further this act of the complainant not only goes in contradiction with the settled law but even breaches the builder buyer agreement dated 02.02.2010. That Clause 16 of the builder buyer agreement dated 02.02.2010 establishes the *procedure for accepting possession.*

XX. That, therefore, since the complainants have failed to accepted possession is 2019, the respondent is also entitled to recover holding charges from the complainants.

XXI. 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 unpleasant

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situation. That it is due to the default of the complainants, the allotment could not have been carried out.

XXII. That if any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The 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 allottee at stake. If at all, the complainants had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of such a long time at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainants is made crystal clear with the present complaint and concretes the status of the complainants as an investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

XXIII. That it is evident from the complaint 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. It is submitted that huge costs must be levied on the complainant for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent.

XXIV. That the respondent had to bear with the losses and extra costs owing due delay of payment of installments on the part of the complainant for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainants.

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

XXVI. That the complainants have been acting as genuine buyers and desperately attempting to attract the pity of this authority to arm twist the respondent into agreeing with the unreasonable demands of the complainant. The reality behind filing such complaint is that the complainants have resorted to such coercive measures due to

the downtrend of the real estate market and by way of the present complaint, is only intending to extract the amounts invested along with profits in the form of exaggerated interest rates.

XXVII. That this conduct of the complainants itself claims that the complainants are mere speculative investors who have invested in the property to earn quick profits and due to the falling & harsh real estate market conditions, the complainants is making a desperate attempt herein to quickly grab the possession along with high interests on the basis of concocted facts.

XXVIII. That furthers the reasons for delays are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainant had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of consumer courts and in further view of the fact the complainants had knowingly made an investment in a future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.

XXIX. That the complainants primary prayer for handing over the possession of the said apartment is entirely based on imaginary

and concocted facts by the complainants and the contention that the respondent was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in realty the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking in 2010 was made by the complainants towards a *future potential project* of the respondent and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainant; hence the complaint does not hold any ground on merits as well.

XXX. That further the respondent has applied for the mandatory registration of the project with this authority but however the same is still pending approval on the part of the authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the Act for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondent.

This by any matter of fact is counted as a default on the part of the respondent.

XXXI. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainants while investing in an apartment which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said flat. Hence the complaint is liable to be dismissed on this ground as well.

XXXII. 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

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

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

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XXXV. That further, on the other side, the respondent has applied for the mandatory registration of the project with the authority and has successfully received registration certificate no. 279 of 2017 and has been extended vide Memo No. HARERA/GGM/REP/RC/279/2017/EXT/98/2019 dated 12.06.2019 which is valid up till 18.02.2025. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the Act for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondent. This by any matter of fact is counted as a default on the part of the respondent.

XXXVI. There is no averment in the complaints which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainants while investing in a plot which was subject to zoning approvals

were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said unit. Hence the complaint is liable to be dismissed on this ground as well.

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

XXXVIII. That despite several adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondent have 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 have been

continuing with the construction of the project and sooner will be able to complete the construction of the project.

XXXIX. The complainants persuaded the respondent to allot the said apartment in question to them with promise to execute all documents as per format by them and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainant.

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, Haryana, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case maybe;*
>
> ***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 complainant being investor

10. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer, and he has paid total price of Rs.44,38,497/- 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 him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr***. has also held that the concept of investors is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants

G. I To set aside the cancellation of the booking of the impugned unit done by the respondent company vide email dated 25.11.2021;

11. Vide order dated 04.02.2022, the authority had directed the respondent/builder to maintain the status- quo with regard to the subject unit till further direction. As per documents placed on record, the respondent vide letter dated 27.11.2021 cancelled the subject unit of the complainants on account of non-payment of the demand raised in respect of the booking amount. The respondent issued a reminder letter for default of payment dated 20.09.2021 (page no. 101 of the complaint) for non-payment of such booking amount of Rs.11,39,966/- and holding charges of Rs.1,33,670/-. The matter needs detailed discussion. A final reminder dated 21.10.2021 was also sent in this regard. There has been a delay of more than 9 years in handing over the possession. The Hon'ble Supreme Court has also observed in many cases that in case of delay in projects, the allottee cannot be forced to make payments when he is not sure about the possession. However, the respondent is directed not to demand holding charges from the complainants/allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

The authority observed that the complainants have already paid substantial amount of money in respect of the subject unit. The complainants have paid 44,38,497/- against the total sale consideration of Rs.48,31,125/-. Furthermore, the complainants submitted that they are ready and willing to pay the outstanding dues and take possession of the subject unit.

12. In view of the above, the authority directs the complainants to pay outstanding dues along with interest at the prescribed rate within 30 days, if any after adjustment of delayed possession charges failing which the respondent/builder shall be entitled to cancel the subject unit.

G. II **Direct the respondent to immediately deliver the possession of impugned unit no. N-1201, Edge Tower, Ramprastha City, Gurugram to the complainant by revoking illegal demands and adjusting the amount due with the amount of interest payable.**

G. III **Direct the respondent company to pay interest at the prescribed rate (MCLR + 2%) for delayed period of handing over of the possession calculated from the date of delivery of possession as mentioned in the ABA i.e., from 31.08.2012 till the actual date of handing over of the possession impugned unit.**

G. IV **Direct the respondent to adjust the demand raised by the respondent company in the final demand raised by the respondent company.**

13. **Validity of offer of possession:** It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

i. Possession must be offered after obtaining OC/CC;

ii. The subject plot should be in habitable condition;

iii. Possession should not be accompanied by unreasonable additional demands.

14. In the present case, the respondent offered the possession of the allotted unit to the complainants on 18.10.2019, but till date no occupation certificate with regard to tower N, in which the unit of the allottee is allotted. Since the first condition to a valid offer of possession is not satisfied, therefore, the said offer of possession cannot be regarded as a valid offer of possession. The OC for tower N was obtained on 13.02.2020 and subsequently an offer of possession was made on 23.02.2021. Therefore, the first condition among three essentials for a valid offer of possession. There is no objection raised by the complainant that the said unit is unhabitable, therefore, it is presumed that the allotted unit since offered after obtaining required sanctions is in habitable condition.

15. The said offer of possession vide email dated 23.02.2021, is accompanied by a statement of account placed on page no. 76-77 of the complaint. As per the said statement an amount of Rs. 1,44,462/- is charged against holding charges. The respondent shall not charge holding charges from the complainants at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020.

16. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under

the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> ***"Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

17. 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."*

18. 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.

19. 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.

20. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2012 and further provided in agreement that

promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.

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

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

22. 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

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reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

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

24. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.04.2022 is 7.40%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.40%.

25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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

G. V Direct the respondent to set aside the demand raised by the respondent company with regard to increase in super area of the impugned unit no. N-1201.

27. An apartment buyer agreement dated 02.02.2010, the complainants were allotted the subject unit of the complaint i.e., N-1201 and the area of the subject unit was 1675 sq. ft. which was later increased to

1770 sq. ft. There is an increase of 95 sq. ft. which constituting 5.67% of original area. As per statement of account on page no. 76-77 of complaint, a total amount of Rs. 2,23,250/- was increased on account of such increase in area of the apartment.

28. As per clause 7(e) of said agreement, in case if alteration is less than 10%, the allottee shall be under obligation to make payment of such increase in super area within 30 days of the dispatch of such notice by the respondent company. The said clause of the agreement is reproduced hereunder: -

> *7(e) In case of any alteration/modification resulting in less than 10% increase in Super Area, RAMPRASTHA shall not be obliged to take any consent from the Allottee the Allottee agrees and acknowledges that he/she/ they it shall be obliged to make payments for such increase in Super Area within thirty (30) days of the date dispatch of such notice by RAMPRASTHA,*

29. Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 1675 sq. ft. to 1770 sq. ft. without any prior intimation and justification. The respondent, therefore, is entitled to charge for the same at the agreed rates since the increase in area is 95 sq. ft. which is less than 10%. However, this remain subject to the conditions that the flats and other components of the super area on the project have been constructed in accordance with the plans approved by the competent authorities.

G. VI Direct the respondent to set aside the demand raised by the respondent company with regard to electricity meter charges, electricity supply and installation charges, water connection charges, FTTH.

30. **Electricity Meter Charges, Electricity Supply, Water Connection Charges:** As per statement of account on page no. 76-77 of the complaint, the respondent has charged an amount of Rs.41,772/- towards water connection charges, Rs.1,04,430/- towards electricity supply and installation charges and Rs. 12,980/- towards electricity meter charges.

31. As per clause 11(d) of agreement dated 02.02.2010, the complainants shall pay applicable charges on account of electricity charges and water charges. The said clause of the agreement is reproduced hereunder: -

> *11.*
> *d) Electricity, Water and Sewerage Charges*
> *The electricity, water and sewerage charges as applicable shall be borne and paid by the Allottee(s):*
> *(i) The Allottee undertakes to pay additionally to RAMPRASTHA on demand the actual cost of the electricity, water and sewer consumption charges and/or any other charge which may be payable in respect of the same Apartment.*
> *(ii) The Allottee undertakes that it shall not apply to Haryana Vidyut Prasaran Nigam Limited or any other electricity supply company in his individual capacity for receiving any additional load of electricity other than that being provided by the nominated maintenance agency.*

32. It is to be noted that the said clause deals with charges applicable on consumption basis but there is no specific clause dealing with one-time charges dealing with installation charges, etc. The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on

account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. The respondent is directed to provide specific details with regards to these charges.

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

G.VII Direct the respondent to set aside the demand raised by the respondent company with regards to the maintenance charges.

34. As alleged by the complainants on page no. 20 of the complaint, the respondent has charged six months advance payment towards maintenance charges and the said payment to be made in favour of M/s Arrow Inframart Private Limited. As per clause 22 of the said agreement the complainants must enter into a separate agreement for the maintenance of the group housing complex and shall be obligated to pay maintenance charges to said agency. The relevant part of the agreement is reproduced for ready reference: -

"a. The Allottee hereby agrees and undertakes that he/she/they it shall enter into a separate tripartite maintenance agreement to be provided by RAMPRASTHA with the maintenance agency as may be appointed or nominated by RAMPRASTHA for the maintenance of the Group Housing Complex and the common areas therein (Maintenance Agreement)

b. The Allottee agrees and undertakes to execute the said Maintenance Agreement with the maintenance agency identified nominated and/or appointed by RAMPRASTHA. The Allottee further agrees and undertakes to pay the indicative and approximate maintenance charges as may be levied by the maintenance agency for the upkeep and maintenance of the Group Housing Complex, its common areas, utilities, equipment stated in the Group Housing Complex and such these facilities forming part of the Property

c. In addition to the payment of the maintenance charges to be paid by the Allottees (s), the Allottees agrees and undertakes to pay interest free maintenance advance @ Re 50-persq ft on the basis of the Super Ares as provided in the Maintenance Agreement."

35. It is to be noted that as per statement of account raised by the respondent with offer of possession there are IFMS charges charged @ Rs. 50/- per sq. ft. and the same is in consonance of clause 22(c) of agreement dated 05.07.2010 and no charges have been charged on account of maintenance charges. Therefore, as per clause 22(c) of the buyer's agreement, the complainant has agreed to pay IFMS charges. The authority directs the complainant to pay the IFMS charges as per the buyer's agreement.

G.VIII Direct the respondent company to pay a cost of Rs. 1,00,000/- towards the cost of the litigation.

36. The complainants are claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act

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has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

37. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the apartment buyer's agreement executed between the parties on 02.02.2010, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.08.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.08.2012. Occupation certificate has been received by the respondent on 13.02.2020 and the possession of the subject unit was offered to the complainants on 23.02.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the apartment buyer's agreement dated 02.02.2010 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's

agreement dated 05.07.2010 to hand over the possession within the stipulated period.

38. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.02.2020. The respondent offered the possession of the unit in question to the complainants only on 23.02.2021, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 31.08.2012 till the expiry of 2 months from the date of offer of possession (23.02.2021) which comes out to be 23.04.2021.

39. 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 at prescribed rate of interest i.e., 9.40% p.a. w.e.f. 31.08.2012 till the expiry of 2 months from the date of offer of possession (23.02.2021) which comes out to be 23.04.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

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

i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.40% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 31.08.2012 till 23.04.2021. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

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

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

iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is debarred from claiming holding charges from the complainants /allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

41. Complaint stands disposed of.

42. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.04.2022