



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 430 OF 2020

Rise Projects Private Ltd.

....COMPLAINANTS(S)

VERSUS

Municipal Corporation Faridabad

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Pronouncement of Order: 24.11.2022

ORDER

Order pronounced. Complaint stood disposed of.

Miscellaneous applications having filed by either party parties and not already disposed of would be deemed to be disposed of in view of this detailed order.

.....
DR. GEETA RATHEE SINGH
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 430 OF 2020

Rise Projects Private Ltd.

....COMPLAINANTS(S)

VERSUS

Municipal Corporation Faridabad

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Date of Order: 24.11.2022

Present: Mr. Venkat Rao, Ld. Counsel for the complainant
None for the respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. The present complaint dated 08.03.2020 has been filed by the M/s Rise Projects Private Limited (hereinafter referred as complainant or allottee) in Form CRA under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (for short Rules of 2017) for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder

wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions to the allotted as per the agreement entered between the parties.

**FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY
COMPLAINANT**

2. That, Municipal Corporation Faridabad (hereinafter referred to as "MCF or Respondent"), as per the Master Plan 2021 of Faridabad, floated a group housing scheme on 09.08.2012 for the development of multi storey flats/apartments, in Sector 41 in revenue estate of village Sarai Kawaja, Faridabad. The aforesaid group housing scheme consisted of six group housing plots marked as GH-01, GH-02, GH-03, GH-04, GH-05, and GH-06 besides a primary school, community centre and a commercial centre. As per the scheme, development of infrastructure including the school, community centre and commercial centre were to be undertaken by the MCF and all six of the plots were auctioned purely for group housing development. Pertinently, the development of the project land had been perceived by MCF for the purpose of all the plots referred above (GH-01 to GH-06).
3. That the MCF decided to sell the plots through an open public auction on floor space index (FSI) basis with terms and conditions and for that

*g
Fathwa*

purpose it had floated an advertisement. The salient features of the invitation to offer reads as under:

- a) Scheme located on existing 30-meter-wide sector dividing road between Sector 41 and 42, Faridabad.
 - b) In the vicinity of Suraj Kund, NHPC colony, Greenfield Colony, MR University and MVN School.
 - c) Just 3 KM from NH-2(Mathura Road), 5 Km from Surjkund and 5 km from Badarpur border.
 - d) External and Internal development charges already included in the allotment price as the allotment was on FSI basis and the FSI reserved price was Rs. 2500/- per sq. ft.
4. That, further, the following terms and conditions of auction of group housing plots on FSI basis were also issued by MCF alongwith the advertisement, wherein auction was to take place on 14.03.2013:-
- a) 25% of the bid amount shall be deposited by the bidder immediately at the fall of hammer and the balance 75% can either be paid in lump sum without interest within 60 days from the date of issue of allotment letter or in 6 equal half yearly instalments. However, the interest on due instalment @ 15% P.A shall be charged from the date of offer of possession after completion of development works at site.



- b) In case allottee wanted to take possession of the group housing plot without completion of development works by MCF, the same shall be allowed subject to undertaking from the allottee that they will not claim for any service from MCF and make arrangement at their own level till such time the required services are provided at site by the MCF.
- c) The MCF shall provide a mettled road as approach to site, sewerage disposal line, water supply, storm water drainage, streetlight and electrification. Till such time, the above services are not provided by MCF, the allottee shall make requisite arrangements at its own level.
5. Pursuant to the advertisement issued for auction of group housing plots, MCF conducted an open auction on 14.03.2013. At the time of auction, in response to specific query of bidders/developers present therein, the officials of MCF present therein, publicly verbally announced that as part of the development works, the group housing plots shall be connected by a direct road via the NHPC Colony by removing the existing boundary wall constructed along eastern boundary to interlink the proposed 18 metres wide road with the existing 12 metre wide road in TPS 7 to reach Badkhal Surajkund road and MCF would take necessary steps to implement the same immediately. The officials of

S. Rathee

MCF also assured and promised that the development works shall be completed within a period of 1 year. The respondent corporation has made official video recording of auction process which will prove this aspect.

6. In the auction dated 14.03.2013, 6 group housing plots on FSI basis, forming part of project were allocated to 6 different bidders/developers including the complainant. The complainant was the highest bidder for the group housing plot no. GH-2, measuring 2.64 acres in Sector 41, Faridabad, with the highest bid of Rs. 4000/- per sq.ft. of permissible FSI. The MCF vide Memo No. MCF/AEO/2013/505 dated 12.04.2013 allotted the group housing plot no. GH- 2 to the complainant on FSI basis.
7. That the complainant, keeping in view the terms and conditions of allotment and also the assurance given by MCF officials during auction proceedings that the development works, and the amenities/facilities would be provided by the MCF within 1 year, decided to take the possession of plot, which was accordingly given on 10.05.2013.
8. That, the building plans of the complainant were duly approved by MCF on 07.10.2013. Thereafter, the complainant started construction of residential project under the name and style of 'Rise Sky Bungalows'. The complainant had been acting on the basis of the verbal assurance



given by the MCF to complete the internal and external development works within a period of 1 year from the date of auction.

9. That, MCF did not start the development works, leave apart finishing the same, within assured time, despite repeated request of the complainant, thereby, adversely affecting the residential project of the complainant, as the complainant was not able to attract prospective buyers and consequently, could not raise funds as it would have been able to if the entire infrastructure and amenities facilities to be provided by MCF were in place.
10. That, instead of complying the obligations on its part, MCF issued many show cause notices for payment of due instalments which were duly responded to by the complainant. The complainant vide various letters/replies had inter alia requested MCF that the demand for further instalments be deferred till completion of development works by the respondent, considering the financial hardships being faced by the complainant due to no fault of his. The complainant also apprised MCF of the fact that the amount of FSI includes EDC and IDC and the price of the plot has already been paid as per the circle rate of the plot in the area, and therefore, the balance payment ought to be commensurate with the development works.
11. That, thereafter, with a view to discuss and resolve the issues pertaining to payment of instalments as highlighted above, the MCF constituted a

S. Rattue

committee comprising of Chief Town Planner, Superintendent Engineer, Senior Town Planner and Financial Controller and requested the allottees of group housing plots including the complainant to send their representatives to attend meeting to be held on 28.10.2014. The various submissions made during the meeting were put for consideration, decision and necessary approval of the Commissioner, MCF.

12. That, in view of the detailed submissions made by the committee, Commissioner, MCF on 31.10.2014 passed an order approving the proposal made in the minutes of the meeting. The various directions included in the said order are reproduced herein below:

- a) Chief Engineer will ensure and be personally liable to ensure that all development works are completed in the next 6 months as delay is causing financial loss to the MCF.
- b) No damage charges are payable due to delay in development works as agreed by the representative of the allottee.
- c) Rescheduled the payment of instalments of the total bid amount, thereby allowing the developers to pay 45% of the amount of the total consideration amount of cost of land on or before 10.11.2014 along with penal interest @ 3% p.a. on the due amount and further directed that the remaining amount of



55% shall be payable in 6 equal half-yearly instalments commencing from 12.04.2015 and end on 12.10.2017.

- d) Interest on demand shall be payable as per provisions of terms and conditions of allotment letter.
 - e) Withdrawal of show cause notices to allottees allowed.
 - f) Interest is liable to be paid by the allottee to MCF which has to carry out development works within the period so agreed in terms and conditions of the allotment and as announced at time of auction but was unable to do so beyond the explainable reasons such as financial allocations, technicalities etc., due to which developments works are still not completed even after 1.5 years resulting into financial losses to the allottees as alleged by them to the committee which seems justified and legal.
13. That, the fact that there was no development at the site as assured by MCF was acknowledged in the order and directions was issued to the Chief Engineer, MCF to ensure that the development works are completed within 6 months from the date of the order. Neither from the order nor otherwise could it be suggested that the obligations of the complainant would continue *de hors* of fulfilment of the obligations of MCF. Pursuant to above orders of Commissioner MCF, the MCF vide

S. Patwe

Memo No. MCF/CTP/2014/1071 dated 03.11.2014 withdrew the show cause notice issued earlier.

14. That, in compliance of the said order of Commissioner MCF, complainant deposited 45% of the amount of the total sale consideration within the stipulated period. However, despite the categorical directions of the Id. Commissioner to complete the works within 6 months from the date of order, MCF failed to complete the internal or external work nor did it install the services at their end in terms of clause 6 of the allotment letter.
15. That, due to repeated inaction on part of the respondent corporation, the complainant and other allottees again represented their grievances before Id. Commissioner, MCF. In furtherance of their representation, the Id. Commissioner MCF again held a meeting on 30.08.2016 with the official of the MCF and representatives of the complainant and other allottees. Considering the discussion in the said meeting, Id. Commissioner passed an order dated 28.09.2016 with the following directions:

- a) DA branch shall take immediate necessary steps to get the road connectivity through NHPC colony to the auction site.



- b) The Chief Engineer and the concerned executive engineer to intimate the exact date for starting the pending development works within 3 days along with PERT chart for timely completion of development works.
- c) The allottee/developers to make part payment as mutually agreed of the due instalments to initiate development works held up due to financial crunches of MCF at the earliest.
- d) The concerned joint commissioner (F)/STP shall take action for renewal/revalidation of the building plan for a total period of 5 years already sanctioned by the MCF in favour of allottees/developers.
- e) The financial controller/officer in charge accounts, respondent MCF shall open a separate bank account for payment to be deposited by the allottees. All payments to the contractor in respect of the development works shall be released from this account.
16. That in compliance of above order dated 28.09.2016 of the Id. Commissioner, the complainant and the other allottees jointly deposited a total amount of 25 lakhs with MCF. Despite the deposit of the said

S. Kataria

amount also, no action was taken by the MCF for carrying out the development works. Since MCF miserably failed to comply with any of their obligations, complainant has been unable to meet its commitments to the allottees and consequently sustained heavy losses not only monetary but also of reputation.

17. That in view of the above circumstances, complainant submitted a representation dated 17.08.2017 before Id. Commissioner, MCF seeking justice and immediate necessary actions. However instead of taking necessary action on the same, MCF issued a show cause notice dated 08.12.2017 to the complainant, purportedly on account of non-payment of remaining allotment money and asked the complainant to show cause that why the allotted plots should not be cancelled and resumed by MCF, entire amount already deposited by complainant be forfeited and actual physical possession should not be taken and sealed by MCF.
18. That on receiving the show cause notice, the complainant on 18.12.2017 submitted a short reply before the Id. Commissioner, MCF appraising that show cause notice issued is premature and bad in law and against the terms of allotment and subsequent order dated 31.10.2014 and in view of specific mandate of clause 3 of allotment memo. However, MCF without considering the reply dated 18.12.2017 passed an order dated 23.12.2017 under Section 263A of Haryana Municipal

[Handwritten Signature]

Corporation Act, 1994 and threatened the complainant for sealing of plot and soon thereafter sealed the plot vide order dated 30.12.2017.

19. That thereafter aggrieved by the orders dated 23.12.2017 and 30.12.2017 the complainant filed an executive appeal under Section 263A(4) of 1994 Act before the Divisional Commissioner, Faridabad Division. The Ld. Divisional Commissioner, Faridabad Division vide order dated 03.01.2018 set aside the sealing order dated 30.12.2017 passed by the respondent thereby de-sealing the allotted plot of the complainant subject to payment of Rs. 2 crores to MCF. It was further directed by the Divisional Commissioner, Faridabad Division, that the amount received from the complainant is to be deposited in an escrow account and same shall be utilised towards completion of development works.
20. That further, being aggrieved by the order dated 03.01.2018 passed by the Id. Divisional Commissioner, Faridabad Division, the MCF preferred a revision petition before the Ld. Principal Secretary to Government of Haryana, Urban Local bodies department. Ld. Principal Secretary vide order dated 16.02.2018 partly allowed the revision petition filed by MCF, thereby directing the complainant to deposit an additional amount of Rs. 50 lakhs. It was further directed by Ld. Principal Secretary that MCF, out of the amount which may be received from the complainant, would deposit an amount of Rs. 1 Crore in an



escrow account and the same shall be utilised for completion of remaining work at site. In compliance of order dated 16.02.2018, complainant deposited an additional amount of Rs. 50 lakhs with MCF on 21.02.2018.

21. That subsequently MCF vide memo dated 02.04.2018 rescheduled the instalments of the outstanding dues in terms of order dated 16.02.2018 passed by the Ld. Principal Secretary. The MCF by doing so not only acknowledged that the outstanding amount was payable by complainant after the completion of development works. That despite receipt of an amount of Rs. 2.5 crores in terms of orders dated 03.01.2018 and 16.02.2018 and specific directions to complete the development works within a period of 6 months, MCF did not complete the same at site.
22. That MCF is engaged in development and planning of group housing schemes and is solely responsible for internal and external development works and also for providing amenities/facilities in the said project/scheme and thus performs functions of a promoter of a real estate project which in this case is group housing scheme, Sector 41, Faridabad, Haryana. The said project is squarely covered under the definition of 'real estate project' under Section 2(zn) of Real Estate (Regulation and Development) Act, 2016 (Hereinafter referred as 2016 act), with MCF being a promoter as well. Therefore, the same ought to have been registered by MCF as an ongoing project under the provision



of 2016 Act and rules framed thereunder. The MCF is liable to fulfil obligations as a promoter vis-à-vis real estate project.

23. That further, the MCF in order to avoid its liabilities issued a completion letter to the complainant on 03.12.2019. It is stated that MCF has failed to complete the development works which has resulted in unwanted delay in project work by the complainant which is beyond the control of complainant.

RELIEF SOUGHT

24. The complainant in its complaint application dated 08.03.2020 has sought following reliefs:
- I. To direct the respondent i.e., MCF to get the Group Housing Scheme, Sector 41, Faridabad registered under RERA Act, 2016.
 - II. To direct the respondent MCF to fulfil its obligations as a promoter as required by law to be carried out in a time bound manner.
 - III. Any other order that this Ld. Authority may deem fit.
25. However, the complainant vide application dated 18.01.2021, amended their prayer/relief clause to read as following:
- I. MCF should be directed to be register their project as a promoter under the provisions of the RERA Act,

S. P. Rattree

- II. MCF should be asked to complete entire infrastructural work;
and
- III. That MCF shall pay interest from 2014 @ SBI MCLR + 2%
on account of amount deposited as delay penalty to the
complainant till the date of possession.
- IV. MCF shall pay penalty due till date within 60 days of passing
of the order by the Id. Authority.
- V. Any other order or direction that this Id. Authority may deem
fit and appropriate in the case.

REPLY SUBMITTED ON BEHALF OF RESPONDENT

Ld. counsel for respondent filed detailed reply dated 25.11.2020 to the
aforementioned complaint application inter alia pleading therein:

26. That, the respondent is a local body constituted under the Haryana
Municipal Corporation Act 1994, and therefore, cannot be said to be a
promoter for the purpose of RERA Act, 2016. The respondent does not
fall within the definition of promoter as provided under section 2(zk) of
the act read with definition of 'ongoing project' under rule (1)(O) of
Haryana Estate (Regulation and Development) rules, 2017.
27. That respondent had allotted 6 group housing sites through open auction
held on 14.03.2013 under Land Utilisation Scheme located in the
revenue estate of village Sarai Khawaja, Sector 41, Faridabad duly
approved by the Government/Competent Authority vide Memo No.

G. Rattree

CTP/A3/2012/29873 dated 09.08.2012. In the open auction held on 14.04.2013, the complainant was the highest bidder for the site in question and thus allotment letter bearing Memo No. MCF/AEO/2013/505 dated 12.04.2013 containing detailed terms and conditions.

28. That, the relevant terms and conditions regarding payment of price of the plot, completion of development works and handing over the possession are as under:

- a. 25% of the total bid amount of Rs.80,40,29,466/- which works out to be Rs. 20,11,00,000/- was deposited by complainant at the time of fall of hammer on 14.03.2013.
- b. The balance 75% unpaid amount, i.e., ₹ 60,29,29,406/- can be paid by bidder/allottee either in lump-sum without interest within 60 days from the date of issue of the allotment letter or in 6 equal half yearly instalments. But, the interest on due instalments @15% p.a. shall be charged from the date of offer of possession after completing the development works at site. The first instalment to fall due after expiry of 6 months from the date of allotment letter.
- c. In case any allottee opt for instalment mode, i.e., balance 75% unpaid amount in 6 equal half yearly instalments then whatever payment is due after offer of possession of plot,

G. Patraee

will first be adjusted towards the interest amount due, if any, and thereafter the remaining amount deposited by allottee will be adjusted towards the principal amount due.

The schedule of instalments was as follows:

Instalment No.	Due Date	Principal Amount
1	12.10.2013	Rs. 10,04,88,245/-
2	12.04.2014	Rs. 10,04,88,245/-
3	12.10.2014	Rs. 10,04,88,245/-
4	12.04.2015	Rs. 10,04,88,245/-
5	12.10.2015	Rs. 10,04,88,245/-
6	12.04.2016	Rs. 10,04,88,245/-

- d. In case the instalment is not paid by 10th of the month following the month in which it falls due or in case the additional price if any on account of increase or decrease in plot area is not paid within time, penal interest @3% p.a. over and above 15% p.a. shall be charged. This penal interest shall be applicable only upto the last date of payment of final instalment.
- e. The possession of group housing plot to be offered as soon as development works are completed by engineering branch of MCF.

G. Kataria

- f. MCF to provide only metalled road as approach road to the plot, sewage disposal line, water supply, storm water drainage, street light and electrification. Till such time the above services are not provided by MCF, the allottees to make requisite arrangement at their own level.
- g. Allottee to get building plans sanctioned from Commissioner, MCF within 6 months from date of offer of possession and shall start construction within one year and shall complete the building within 5 years. In case construction not completed within such time, allottee to pay the extension fee as determined by Commissioner, MCF.
- h. The possession of Group housing plot can be taken after issue of allotment letter without waiting for offer of possession subject to submission of undertaking that they will not ask for any services from MCF and shall manage the required services at their own level till such time the services are not provided by MCF.
29. That, the allottee stopped making payment after first instalment on pretext of non-completion of development works. The payment of instalment was never linked with completion of development works. Complainant was required to pay the instalment as per the schedule of

Pathe

terms and conditions given at the time of allotment. It was only the interest part which was to be charged from the date of offer of possession to be delivered after completion of the development works at site.

30. That, the allottee demanded possession in the absence of development works by submitting an undertaking that it will not ask for any services from MCF and will make its own arrangement. Hence the complainant cannot be absolved from its liability to pay the instalment in terms of the allotment letter and in case they fail to pay instalment as per schedule, they are additionally liable to pay penal interest @ 3% p.a.
31. That, owing to defaults of complainant to pay instalments, on their request, payment of instalments was rescheduled for the remaining 55% of the total cost vide order dated 31.10.2014 passed by Commissioner, MCF.
32. That complainant failed to honour the order dated 31.10.2014 therefore, the site in question was sealed in pursuance of order dated 30.12.2017 passed by Commissioner, MCF. Complainant filed an appeal against order dated 30.12.2017 before Divisional Commissioner, Gurugram Division. That appeal was allowed vide order dated 03.01.2018 wherein Divisional Commissioner, Gurugram Division directed complainant to pay Rs. 2 crore which was to be kept in escrow account to be utilised by MCF for development works. Complainant was directed to resume

G. Ramesh

the payment of instalment along with interest as per terms and conditions of allotment letter and order dated 31.10.2014.

33. That the order dated 03.01.2018 by Divisional Commissioner, Gurugram Division was challenged by respondent before Principal Secretary to Government of Haryana, Urban Local Bodies. Principal Secretary decided the appeal vide order dated 16.02.2018 and directed the respondent to expedite the necessary development activities at the site and complete the same within 6 months so that complainant may carry forward their appropriate plans. The complainant was directed to pay Rs. 50 lakhs in addition to Rs. 2 crores as directed by the Divisional Commissioner and MCF was also directed to deposit Rs. 1 crore. All such collected amounts to be kept in an escrow account to meet the development expenditure. It was further directed that the future instalment shall be payable as per provisions of terms and conditions of allotment letter along with interest for deferred payments after the completion of development works at site or after the completion of period of 6 months, whichever is earlier.
34. That as per the report dated 01.08.2019 received from Engineering Branch, MCF, the required development works at site has already been completed. Complainant failed to even comply with the orders dated 16.02.2018 of Principal Secretary. For this default, MCF issued notice vide Memo No. MCF/STP/2019/321 dated 16.04.2019 asking

S. Rattree

complainant to make the payment in compliance of said order dated 16.02.2018. In response to this notice, complainant submitted a representation dated 20.12.2019 which was answered by respondent vide Memo No. MCF/STP/2019/1241 intimating about the completion of development works.

35. That complainant made a request to the commissioner, MCF to grant consent for appointment of sole Arbitrator as per clause 16 of allotment letter. Commissioner, MCF declined such request vide Memo. no. MCF/STP/2020/523 dated 12.05.2020 and directed the complainant to deposit instalment within 15 days from date of this letter. It was informed to complainant that in case they fail to honour this, action for cancellation of allotment, forfeiture of deposited amount and resumption of plot would be initiated in accordance with terms of allotment letter.
36. That the complainant filed an application under Section 9 of Arbitration and Conciliation Act, 1996 before ADJ, Faridabad. This application was decided vide order dated 09.10.2020 whereby MCF was restrained from taking a coercive method for effecting recovery of due amount. Complainant also filed an application under Section 11 of Arbitration and Conciliation Act, 1996 bearing no. ARB-108 of 2020 before Hon'ble Punjab and Haryana High Court and said application is also



pending. Complainant at the time of filing this complaint has concealed this fact.

Final written arguments submitted by Complainant on 20.10.2022.

37. Ld. Counsel for Complainant Mr. Akshay Bhan, and Mr. Venkat Rao, Sr. Advocates filed the following written submissions:

i) That the infrastructure facilities should have been completed within one year from the date of Allotment Letter dated 12.04.2013 whereas, the Respondent has still not completed the promised infrastructural facilities. That the committed metalled approach road connecting Surajkund-Badkhal Road through colony of NHPC to inside of green field colony along with complete sewage disposal lines, water supply, storm water drainage, streetlights, electrification, Nursery School, Community Centre, Convenience shop and other facilities which were promised at the time of auction, there is still no sight of iota of development in respect of these facilities and amenities.

ii) Delay on the part of the Respondent to complete the development works, admittedly, is beyond 7 years and still continuing. Non completion of development works is established from the report of the Local Commissioner Dated

Kattree

10.01.2022. That because of the delay caused, the Respondent is liable to compensate the Allottee i.e. the Complainant, in terms of Section 18 of the RERA Act, 2016 and pay interest on the amount deposited, for the period of delay in completion of the development works. The Respondent has admitted its delay from 11.04.2014 till 03.12.2019, however the respondent is liable to make payment of interest calculated till the date of the order, with further interest till completion of development works.

iii) MCF, being a Government Body, used its dominant position and included onerous clauses in the Allotment Letter. This is not only contrary to the representations made during the auction proceedings, but the said statement is also contrary to the intent of the terms incorporated in the allotment letter. As per the allotment letter dated 12.04.2013, an onerous duty was cast on the Complainant to commence the construction work within one year and complete the proposed construction on the allotted plot within a period of 5 years. In the face of this condition, the MCF cannot say that it could delay the completion of development works in perpetuity. This clearly shows the abuse of dominant position by the Respondent.



iv) MCF asked its allottees including the Complainant to furnish a coercive Undertaking at the time of handing over the possession of the allotted plot. That the Complainant acting under the bona-fide belief that MCF would complete the development works within one year, which was committed to the Complainant during the Auction by the Officials of MCF, and also having no other option gave the Undertaking dated 16.04.2013 that the Complainant will not ask for services from the MCF and manage it at its own level till the time services are provided in the area by the MCF. The said undertaking, in no manner absolves the respondent from the obligation of completing the development works within the time represented by it. Also, in light of the subsequent admissions of the MCF regarding its failure and obligation to complete development works within a time bound manner, such as in the committee meeting dated 31.10.2014 and letter dated 03.11.2014, the undertaking loses any significance.

v) The Complainant was acting under the bonafide belief that the MCF would complete the development works within a period of one year. The Undertaking given by the developers was only a stop gap arrangement till the time MCF completed



the development works, within the time promised at the time of bidding. Thus, the undertaking can in no manner condone the subsequent delay in fulfilment of obligations by the MCF.

vi) The Undertaking dated 16.04.2013 lost its force when it was admitted by the MCF in the committee meeting dated 31.10.2014 that there has been delay on the part of MCF in completing the development works. Further, vide letter dated 03.11.2014, the MCF itself undertook to complete development works within a period of 6 months, thus beyond that period, the MCF cannot take the plea of non-stipulation of time period for completion of development works in the letter of allotment. It has repeatedly been held vide various orders that the MCF has utterly failed to complete the development works as per its own assurance at Auction Meeting and at various other proceedings. At this stage it cannot escape its own wrong by citing a coercive Undertaking and claiming it to be in force for perpetuity. Even the reading of the undertaking would show that it contemplated the completion of development works by the MCF. Therefore, it is not just and equitable and against the principle of natural justice.



vii) The MCF should be estopped from going back from their assurances given at the open house, whereby the Complainant had invested huge amounts relying upon the representation made by the MCF. It is also pertinent to note that MCF under the garb of the Undertaking, is trying to arm-twist the Complainant to deposit money with it, without fulfilling its obligations to complete the development works within the timelines. Even otherwise, various authorities have held that the MCF has to complete developments by stipulated dates, however it has failed to comply with the same.

viii) It is an obligation and responsibility of MCF to complete the infrastructure facilities as per various provisions of the RERA Act, 2016. This being a clear statutory right conferred by law upon allottees, it cannot be waived off merely by signing an undertaking. There cannot be an estoppel against a statute. This position has also clearly been held by the Hon'ble Supreme Court in the matter of *State of Uttar Pradesh and Anr. VS. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharah Samiti and Ors.* ((2008)12SCC675).

G. Kataria

ix) It is a well-established position of law that an allottee cannot be made to wait forever for the development of the project.

x) That the Hon'ble Apex Court in case of *M/s Fortune Infrastructure (Now known as M/s Hicon Infrastructure) & Anr. Vs. Trevor D'lima & Ors., 2018(5) SCC 442* has laid down as under:-

"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration."

xi) This position has been reiterated by the Hon'ble Supreme Court in matter of *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Others (Civil Appeal No 5785 of 2019), Kolkata West International City Pvt. Ltd. .vs. Devasis Rudra (2019 SCC OnLine SC 438)* and plethora of other cases. . Therefore, MCF is liable under general law of land to complete the infrastructure facilities within reasonable time

S. Rastogi

frame and also as per provisions of Section 11 (3) (b), 11 (4), 18 and 34 (f) of RERA Act, 2016.

xii) A coercive Undertaking cannot override the rights of the Allottees, especially when there being no timeline mentioned for completion of development works by the Respondent and also absolve the Respondent from its obligations from completion of the infrastructural development works. This especially where the undertaking only relates to managing services till municipal services are provided. The allotment was made on 12.04.2013, undertaking relied upon by the MCF was given on 16.04.2013. The Development works were to be completed by the MCF by 12.04.2014 (one year from allotment). Thus, the undertaking only relates to the period between 16.04.2013 to 12.04.2014. Its language makes it abundantly clear that the undertaking does not waive the obligation of the MCF in completing the development works within a reasonable time.

xiii) The MCF at the auction promised the bidders that all the development works will be completed within one year from the date of approval of scheme. That the approval of scheme was received on 01.04.2013 and accordingly the



allotment was done on 13.04.2013; therefore, the due date of completion of internal and external infrastructure development works was 12.03.2014. However, the MCF miserably failed to complete the development works. It is noted that 9 years have passed from the date of allotment and still the development works at the project site is not fully completed.

xiv) That the Ld. Authority in Suo Motu Complaint bearing number "1160 of 2021" titled as "**HRERA Panchkula vs Rise Projects Pvt. Ltd.**" *vide* Order dated 06.12.2021 has appointed Local Commissioner to inspect the Project site and submits its report to the Ld. Authority. That Local Commissioner duly inspected the project site and submitted its report, the relevant portion of the said report is mentioned herein below:

- a) **Metaled road as approach to site-** The approach road has been constructed at site. However, the promoters are disputing the road levels at both the entry point which are not in consonance with the levels as approved in the sanctioned plan.



- b) **Sewage disposal lines-** Sewer lines are partially laid and terminate 150 meters before the 30 metres wide existing Sector Road. The lines are not connected as main sewer has not been laid along Sector Road.
- c) **Water Supply-** Water supply lines are laid. However, boosting station across the sector road in Sector 42 is not operational therefore water is not running through the Pipes. The pump house will have to be made operational for supply of water.
- d) **Storm Water Drainage-** Storm water drains have not been laid at site.
- e) **Status of Electrification-** The promoter has to bear the installation charges to DHBVNL towards release of Power Connection and installation of transformers. (However, it is relevant to mention here that the electric lines are laid along the 18 meters wide proposed road.)



xv) That vide Letter dated 02.04.2018 [*@Pg.145, Application in Compliance of Order dt.10.11.2021*] the MCF themselves acknowledged the total amount received, balance amount payable duly audited till the said date. Further, MCF communicated to the complainant that the balance amount of the total cost of the plot will be payable after completion of the development works at site. Also, that interest on such due instalment will be charged as per terms and conditions of allotment letter only after the development works are completed. Thus, the argument that the remaining instalments have already become due and the petitioner has defaulted in payment is wholly misconceived.

xvi) It is pertinent to note that as per its own letter MCF clarified that the instalments could only be falling due after the completion of the development works at site. That since till date the development works at site has not been completed by the respondent, therefore, no liability to pay any instalment amounts have arisen on the complainant.

xvii) The reliance on the schedule of instalments mentioned in the allotment letter would show that the second instalment was due only on 12.04.2014, i.e. the date of completion of

S. Attree

development works as per the statement made during auction. This with a stipulation that interest can be charged only after the completion of development works. When the respondent MCF failed to complete development works, it itself issued the letter dated 02.04.2018, agreeing to the fact that payment of instalment is linked to completion of development works.

38. During the course of hearing dated 14.10.2022, Mr. Venkat Rao, Ld. counsel for complainant orally summarised and concluded the arguments as follows:

A. *i.* The date of Allotment was 12.04.2013

ii. MCF at the pre-bid meeting confirmed:

a. that all the development will be completed within one year of the date of approval of the scheme by the state government.

b. that as part of the development works the group housing plots were to be connected by a direct road via NHPC colony by removing the existing boundary wall constructed along eastern boundary to interlink the proposed 18 meter road with the existing 12 meter road in T.P. Scheme-

7 to reach Badkal Surajkund road and MCF will take necessary steps to implement the same immediately

iii. As per promises made, due date of completion of development works comes to be 12.04.2014 but the works were not complete.

iv. Since, MCF failed to complete the development works the Allotees challenged the demands raised whereby a committee was formed to look into the matter.

v. The Committee vide order dated 31.10.2014 acknowledged the delay on the part of MCF and held that the due date of completion of the development works was April 2015. Further, the complainant also paid Rs.10 crores by 10.11.2014 and the balance amount of the total consideration was re-scheduled and the 1st instalment of the remaining amount was payable on 12.04.2015 i.e falling due on completion of development works by MCF.

Pursuant to the recommendation, the MCF vide letter dated 03.11.2014, itself undertook that the development works will be completed within a period of 6 months. On the basis of this



statement, the petitioner deposited the amount demanded. As a worst case, upon expiry of the said period of 6 months, the MCF defaulted in its obligation and is liable to pay delay penalty and compensation. The default is apparent from the following facts.

vi. **Order dated 03.01.2018 of Commissioner MCF-**

a. acknowledges the delay and held officials of MCF responsible for non-completion of the work

b. held that the payment of instalment was contingent upon the completion of the development works by the MCF and thus the losses suffered by the Allottees

c. that only Rs. 5 crore is required for completion of development works therefore, directed the allottees to deposit Rs. 2 crores each for immediately completing the development works.

vii. **Principal Secretary order dated 9.02.2018/ 16.02.2018**

also upheld the delay and that instalment and interest thereon will be payable only after completion of development at site. It also increased the amounts payable by the allottees from Rs. 2.00 crores to Rs. 2.50 Crores.



vii. **MCF letter of 02.04.2018** acknowledging the total amount received, balance amount payable duly audited till the said date by the Complainant and further rescheduling the instalments, which could only be falling due after the completion of the development works at site. Further, the interest can only be charged on due payments after completion of the development works.

B. Therefore, it is clearly established that there has been a delay by the MCF in completion of the developmental works by their own Orders and further clarified that the instalments, if any, should only be paid after the completion of the development works and interest thereon could only be charged thereafter.

C. It is apparent from the above facts that the MCF by its own letter dated 03.11.2014, stated that it shall complete development works within a period of 6 months. On its failure, any offer of possession became redundant and of no significance. At the worst, and without prejudice to the claim of interest from 12.04.2014, MCF is liable to pay interest from May 2015, on account of its own admission contained in letter dated 03.11.2014. This especially in light of the fact that the Petitioner had deposited amounts on account of the timeline stipulated in this letter.


K. Ramesh

D. It is further to be noted that even till date the development works have not been completed which is also confirmed by the Local Commissioner report as mentioned above and by the observations of the Ld. Additional District Judge vide order dated 09.10.2020.

E. That from aforementioned submissions it is clearly established that MCF has failed in fulfilling its obligation as promoter in delivering the plot with all development works completed on or before 12.04.2014. Also, the facts and documents submitted by the Complainant and the report of the Local commissioner clearly established that in the face of the subsequent developments the undertaking dated 16.04.2013 is inconsequential and not effecting the rights of the Complainant.

F. Thereby, in terms of provisions of RERA Act, 2016 the Complainant is entitled to interest on delay from 11.04.2014 till admitted period of 03.12.2019 and such further period till the completion of development works, as may be decided by the Ld. Authority. Also, the Complainant is entitled to compensation for losses incurred by the Complainant before the appropriate forum.

Written submissions by Respondent on 20.10.2022



Ld. Counsel for respondent Mr. Lokesh Sinhal, Sr. Advocate has submitted the following written submissions:

39. That the whole case of the complainant was that at the time of auction, it was assured that development works shall be completed within one year and since Municipal Corporation, Faridabad has failed to complete the development works within said period of one year, it is entitled to compensation by way of interest on the amount deposited by it with the Municipal Corporation, Faridabad.
40. That in the complaint there is no such prayer made by the complainant to pay any interest on the amount deposited by it with the Municipal Corporation, Faridabad. Though in the application filed by the complainant dated 16.01.2021, the complainant has made prayer with regard to interest but even in the said prayer interest on account of delay, penalty has been claimed till the date of possession. Possession was taken by the complainant on 16.04.2013 itself, therefore, factually there is no ground for payment of any interest on delay penalty on the amount deposited by the complainant with Municipal Corporation Faridabad.
41. That in the terms and conditions of the auction it had already been made clear that till the time the services are not provided by the Municipal Corporation, the allottee shall make requisite arrangement at its own level. It is the case of the complainant that at the time of auction oral


S. Rathee

assurance was given that the development works shall be completed within one year. In support of its claim, the complainant has annexed one CD along with its application filed in compliance of order dated 19.01.2021. However, neither name nor designation of the official who gave such assurance has been mentioned in the application. In this regard, it is submitted that once the allotment letter has been issued on 12.04.2013 after the auction was completed on 14.03.2013 and when in the terms and conditions of the allotment letter dated 12.04.2013 also it has been mentioned in clause 6 "that till such time the above services are not provided by Municipal Corporation, Faridabad you shall make requisite arrangements at your own level". The complainant cannot rely upon oral assurance, if any, given prior to the issuance of allotment letter. The complainant has nowhere challenged the terms and conditions of the allotment letter till date and thus cannot rely upon such oral assurance allegedly given prior to the issuance of allotment letter.

42. That the only provision in the Real Estate (Regulation and Development) Act, 2016 with regard to compensation on account of delay has been provided under section 18 which reads as under:

"Section 18(1):

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



(a) in accordance with the terms of the agreement for sale, or as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there-under or in

S. K. Patil

accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

43. That a perusal of above would show that promoter is liable to pay interest every month of delay till handing over of possession only if he is unable to give possession in accordance with terms and agreement for sale of apartment, as the case may be, duly completed plot, building in accordance with the terms of the agreement for sale, or as the case may be, duly completed by the date specified therein. Meaning thereby the allottee shall be entitled to the interest for delay only if promoter is not able to give possession in accordance with terms of the agreement. In the present case, possession was demanded by the allottee immediately after issuance of the allotment letter in accordance with clause 7 thereof and since complainant submitted the undertaking to the effect that it shall manage the services at his own level till the time the services are provided in the area by Municipal Corporation, Faridabad and there was no time provided in the terms and conditions of the allotment letter for completing the development works, the complainant is not entitled to any interest on account of delay in accordance with Section 18 of the RERA Act.
44. That it is submitted that even at the time of approval of the scheme, MCF was conscious of the fact that topography of the area is such that it will take substantial time, and therefore it was decided that the interest on the

Rathore

instalments shall be chargeable only after the development of works and that till such time municipal services are not provided by the MCF, the allottees be asked to make required provisions at their own level.

45. That it is a strange case where the allottee has not been paying the instalments as per the terms and conditions of the agreement. It is not out of place to mention here that out of total sale consideration of that allottee does not want to pay balance sale price of the land allotted to it but by way of present complaint it also wants the Municipal Corporation Faridabad to pay interest to it on the amount deposited by it with the MCF.

DIRECTIONS PASSED BY THE HONOURABLE PUNJAB AND HARYANA HIGH COURT

46. This Authority granted several hearings in the matter and heard both the parties at length and in exercise of its power under section 36 of the 2016 Act passed various interim orders therein. Effective interim orders were passed on 10.12.2020, 19.01.2021, 16.03.2021 and 10.11.2021. However, order dated 10.11.2021 passed by this Authority was assailed by respondent by filing appeal no. 47/2022 before HREAT. The operative part of the order dated 22.04.2022 passed by HREAT in appeal no. 47/2022 is reproduced herein below:

" 53. At the cost of repetition, it is pertinent to mention that the impugned order dated 10.11.2021 has totally reversed the observations/findings of the learned Authority in its previous order dated 16.03.2021 on the issue of payment of interest for delay in completion of

*Sp
Fatima*

infrastructure works. Such a somersault is not legally permissible. This problem arises as there is a tendency with this Authority to pass the multiple orders to substantially decide the rights of the parties instead of passing a composite order to dispose of the complaint deciding all the issues together. It is well recognised legal requirement that all the issues arising in the lis should be decided together by passing a composite order than in parts. Reference can be made to the Full Bench judgment of Hon'ble Himachal Pradesh High Court in Prithvi Raj Jhingta & Anr Versus Gopal Singh & Anr. 2007(3) R.C.R. (Civil) 407.

54. Thus, keeping in view our aforesaid discussion, the learned Authority had no jurisdiction to review its order dated 16.03.2021 with respect to the validity of the undertaking dated 16.04.2013 and the claim for grant of interest for delay in completion of infrastructure works by the appellant Corporation, as both these issues were decided by the learned Authority substantially in the order dated 16.03.2021.

55. Consequently, the present appeal is hereby allowed, the impugned order dated 10.11.2021 qua the observations made by the learned Authority with respect to the validity of the undertaking dated 16.04.2013 and the claim of the respondent for grant of interest for delay in completion of infrastructure works/facility is hereby set aside."

47. Being aggrieved with the order of HREAT in appeal no. 47/2022 complainant preferred RERA appeal no. 17 of 2022 before Hon'ble Punjab and Haryana High Court. The relevant portion of the order dated 08.06.2022 passed by Hon'ble Punjab and Haryana High Court is produced below:

"22. The RERA Act, 2016 has been established to regulate and promote the real estate sector and to protect the interest of the consumers in an expeditious manner. Keeping that object in mind, this Court is of

S. Rattree

the considered view that the HREAT has correctly concluded that in the interest of expeditious disposal of the matters, it would not be appropriate to pass multiple orders to substantially decide the rights of the parties instead of passing a composite order to dispose of the complaint deciding all the issues together. Apart from the reasons recorded by the HRERA, this Court record its own reasons, which are as under:

- i) There is no specific provision enabling the HRERA to pass a final orders at various stages. Also, there is no provision for prohibiting such course to be adopted.*
- ii) If the multiple orders are passed to substantially decide the rights of the parties, it will lead to additional cost and delay, particularly when all the orders are appealable before the HREAT.*
- iii) Section 43(5) of the RERA Act, 2016, provides for pre-deposit of the amount if the promoter files an appeal against the order of imposing penalty. It is provided in proviso to Sub-Section 5 of Section 43 of the RERA Act, 2016 that the promoter before filing the appeal shall deposit at least 30% of the penalty or such higher percentage as per the orders of the Appellate Tribunal or the total amount to be paid to the allottee including interest and compensation imposed on him before the said appeal is heard. If the multiple orders are passed which are final in nature, without deciding the question of penalty and total amount to be paid to the allottee including interest and compensation, it will be easy to defeat the object behind the proviso of sub-Sections of Section 43 of the RERA Act, 2016.*
- iv) There is a danger, chance of unfairness in deciding the matter in the absence of the complete material, particularly, when the matters are to be decided in a piecemeal manner.*
- v) Sometimes decision on a particular point or issue at the initial stage may pose difficulty before the Authority about the connected issue which remains to be decided, particularly when the decision on such issue is dependent on the issue which already stood decided by the Authority*

*g
Rathore*

23. It would be noted here that this Court has made a comparison between the RERA Act, 2016 and the Arbitration and Conciliation Act, 1996 (hereinafter referred to "the 1996 Act"). In Section 31(6) of the 1996 Act, the statute itself makes a provision enabling the Arbitral Tribunal to pass an interim arbitral award on any matter with respect of which it may make a final arbitral award. There is no parallel provision in the RERA Act, 2016.

24. In such circumstances, the appeal is disposed of with the following observations:

i) In the future, before passing any interlocutory order, the HRERA would examine as to whether there is any real advantage in delivering final orders on particular issue(s) while keeping the remaining issues pending.

ii) There is an inherent contradiction in the order passed by HREAT which need minor clarification. In the absence of challenge by the MCF, this Court is not going into the issue as to whether in the facts of the present case, it was necessary for the HRERA to decide the matter in a piecemeal manner. However, for the sake of repetition, it is observed that the HRERA is advised not to venture into passing the multiple orders, unless necessitated by the circumstances, particularly when there is no specific enabling provision under the RERA Act, 2016. It is also observed that the HRERA, while deciding the complaint by a composite comprehensive order, shall not be bound by the orders passed by the HRERA on 16.03.2021 and proceed to decide the matter after taking into consideration the pleadings and the evidence brought on record while taking holistic view of the matter.

25. The complaint was filed in the year 2020. Hence, the HRERA is directed to proceed to decide the matter, finally, in an expeditious manner.

48. Subsequently, aggrieved by the order dated 08.06.2022 in RERA No. 17 of 2022 passed by the Hon'ble Punjab and Haryana High Court, respondent preferred a special leave petition(civil) bearing diary no. 30057/2022

S. Rattue

before the Hon'ble Supreme Court. Matter was listed for 07.11.2022 and Hon'ble Supreme Court while dismissing the SLP refused to interfere with impugned order dated 08.06.2022 passed by Hon'ble Punjab and Haryana High Court. Therefore, in compliance of the order dated 08.06.2022 of the Hon'ble Punjab and Haryana High Court, taking a holistic view of the matter, the Authority by passing this order shall dispose of this complaint case.

ISSUES FOR ADJUDICATION

49. As per the complaints the following issues emerge for adjudication by this authority:

- I. Whether the Municipal Corporation Faridabad is 'promoter' as per section 2(zk) of RERA Act, 2016.
- II. Whether the Municipal Corporation Faridabad failed to fulfil its obligation as per under allotment letter dated 12.04.2013.
- III. Whether the complainant is entitled to delay interest in terms of Section 18 of 2016 Act?

OBSERVATIONS AND DECISION OF THE AUTHORITY

Issue No. 1: Whether the Municipal Corporation Faridabad is 'promoter' as per Section 2(zk) of RERA Act, 2016.

The authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both the parties, Authority observes and orders as follows:

G. Ramesh

50. It is an admitted fact by both the parties that the MCF as per the Master Plan 2021 of Faridabad, floated a Group Housing Scheme on 09.08.2012 for the development of multi-storey flats/ apartments/ villas in Sector-41, Faridabad. Vide the aforesaid Group Housing Scheme, MCF developed a piece of land into 6 Group Housing Plots and sold them in the open market through public auction. In view of the fact that raw land was developed into plot for selling all or some of the said plots, falls within the definition of 'real estate project' as provided under Section 2 (zn) of the Act of 2016 and MCF, who developed this land into plots and also undertook the obligation of providing the infrastructure facilities such as such as metalled road as approach to site, sewerage disposal line, water supply, storm water drainage, street light and electrification fall within the definition of promoter as per Section 2(zk). Section 2 (zk) of the Act of 2016 inter-alia provides:

2(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

*By
Rattree*

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;

51. Further, the area of the plots exceeds 500 sq. mtrs. and was not granted Completion Certificate by the competent Authority on the commencement Act, therefore, the real estate project launched and developed by MCF for sale under the Group Housing Scheme falls within the definition of on-going project, and as per Section 3 of the Act of 2016 the promoter is obligated to register the same with the Haryana Real Estate Regulatory Authority, Panchkula.
52. Therefore, it is established that the respondent i.e. MCF being a person who had developed land into project, whether or not it is also constructing structure on any of the plots, for the purpose of selling to other persons in the said project shall fall within the definition of promoter as provided

Katree

under Section 2(zk) of the Act of 2016 and is now under a legal obligation to carry out all the functions and duties of a promoter vis-à-vis the allottee i.e. the complainant in this case.

53. The Authority observes that the respondent corporation had allotted a piece of land to the complainant for construction of apartments/ villas. By doing so the respondent also 'caused to construct' the apartments which have been sold to individuals in open market by the complainant. Therefore, respondent corporation has also become a co-promoter vis-à-vis the individual allottees.

54. Accordingly, it is held that the present complaint is maintainable, and respondent corporation is a promoter for the purposes of the Act of 2016 and is obligated to discharge all statutory duties and functions as provided in the Act, Rules and Regulations made thereunder.

Issue No. 2: Whether the Municipal Corporation Faridabad failed to fulfil its obligation as given under allotment letter dated 12.04.2013.

And

Issue No. 3: Whether the complainant is entitled to delay interest in terms of Section 18 of 2016 Act?

55. In the instant complaint it is established that, the complainant, who is a corporate, engaged in the business of real estate development, was allotted plot no. GH-02 for development of group housing apartments/flats and falls within the definition of allottee vis-a-vis the MCF who auctioned six plots

G. Khatun

on 14.03.2013 under a group housing scheme, for development of group housing colonies/apartments. A bare perusal of clause 5 of the allotment letter issued by MCF vide dated 12.04.2013, shows that the possession of the group housing plot was to be offered as soon as the development works are completed by the engineering branch of MCF site. Such development works included providing a metalled road as approach road to this group housing plot no. GH-02, sewage disposal line, water supply, storm water drainage, streetlight and electrification.

56. However, clause 7 of the allotment letter provided another possibility/option to the allottee(complainant) whereby possession of the group housing plot can be taken after issue of allotment letter without waiting for offer of possession subject to undertaking that the complainant/allottee will not ask for any services from MCF and shall manage the required services at its own level till such time the municipal services are provided in the area by MCF.
57. There is no denying of the fact that generally a promoter is always in a dominant position to get the allotment agreement signed from the allottee on dotted lines and the Authority has been disregarding such allotment/builder-buyer agreements/undertakings for reasons of being one sided, dictated by the dominant party and unconscionable. However, the same principle cannot be made applicable in absolute terms in all cases, as, in this particular case, the allottee is not an ordinary layman individual,

g. attree

who is purchasing the real estate property, in fact, the allottee here is a renowned corporate /real estate developer engaged in the business of real estate development for the purpose of earning profits. The case of an ordinary layman individual allottee, who generally buys small plot or an apartment in a real estate project cannot be said to be on the same platform and adjudged on the same parameters with the complainant who is a real estate developer and purchased 2.64 acres plot for 80 crores for development of a group housing society. Individual allottees hardly have resources/knowledge to understand the complexities of the real estate market, on the other hand in the present case, the complainant is a big developers/builder-allottee who gave bid for large size of plots for further development and had best legal teams/experts/resources on whose advice the complainant executed the contract with the respondent.

58. Further, a bare perusal of the provisions of the allotment letter and considering the arguments of the counsel for both the parties, it is evident that the allotment letter dated 12.04.2013 itself provided for two options with regard to taking possession, i.e.,

(i) The possession of the group housing plot will be offered as soon as the development works are completed by the MCF.

or

(ii) The possession of the group housing plot can be taken after issue of allotment letter without waiting for offer of possession subject to

Satree

submission of undertaking that the complainant will not ask for any service from MCF and shall manage the required services at its own level till such time the Municipal services are provided in the area by MCF.

59. Therefore, after the issuance of allotment letter by MCF on 12.04.2013, the complainant had two options either to take the possession as soon as the development works were completed or to take the immediate possession without waiting for offer of possession which was to be made after development by MCF, subject to submission of undertaking that it shall not ask for any services from MCF and shall manage the required services at its own level till the time the services are provided by MCF in the area. Therefore, the plea of the complainant that it was coerced to take possession on submitting the undertaking on 16.04.2013 by the alleged dominant position of the respondent corporation cannot be accepted by this Authority and this thus plea is repelled.
60. Further, attention of the Authority was drawn to clause 21 of the allotment letter dated 12.04.2013 that provides that the allottee will be entitled to construct the flats and book them after obtaining the possession of the group housing plot. Thus, natural corollary is drawn that the complainant instead of waiting for completion of development works by MCF and thereafter taking possession of the plot, voluntarily opted for the second option by taking immediate possession of the group housing plot by



submitting an undertaking dated 16.04.2013 i.e. within four days of the issuance of allotment letter dated 12.04.2013 so that it could start the booking of the flats at the earliest. As per the record of the authority the promoter managed to sell 170 apartments and 2 villas out of the constructed 203 apartments and 8 villas. Thus, it is clear that the complainant, who is in the business of real estate development encashed the promising real estate market conditions prevalent in the year 2013. Therefore, it was purely a conscious business decision taken by the resourceful real estate developer i.e. the complainant to encash the market at that very point of time by choosing second option. Being in this business of real estate development, the complainant was well aware of the fact that any development works undertaken by a government department/agency generally takes time especially due to financial crunches, numerous approvals and tender formalities that have to be complied with. In the case of large projects which are likely to be completed in a period of 3 to 5 years, the allottee are generally keen to take immediate possession of the same so that they could launch the project and start the construction at the earliest. In such circumstances, development authorities/agencies on request, offer possession at the initial stage itself by providing the approach road only. In fact, this practice is followed so as to avoid infructuous expenditure on creating required infrastructure at the initial stage itself. Particularly, in view of the fact that heavy machinery, material and other equipment moved



to the site allotted by the development agency for construction of buildings, such movements of heavy machinery/materials damage the infrastructure created by the development agency in the initial stage itself, whereas, the same is required in working conditions when the habitation actually starts.

61. The plea of the complainant that it choose to take immediate possession of the group housing plot based on the oral statements of the officers of MCF present during the auction proceedings, whereby, the bidders present were orally assured that the development works would be completed in a period of one year. For this, the complainant had produced a CD of the auction proceedings before this Authority. The CD of such proceedings is made so as to keep the record that proceedings went smoothly and in a fair and transparent manner. Till date, the complainant has neither made any grouse against the conduct of auction proceedings held on 14.03.2013 nor named any officer/official of the respondent, who allegedly allured it to give highest bid for the plot.
62. The terms and condition of auction issued by MCF along with the advertisement for auction dated 14.03.2013 clearly provided that in case any allottee wish to take possession of the group housing plot without completion of the development works, the same would be allowed subject to an undertaking that the allottee will an make arrangements at its own level till such time the required services are provided at site by MCF, therefore it is apparent that the complainant even prior to bidding was well

S. Rathore

aware of the basic terms and conditions of allotment. Further, the allotment letter dated 12.04.2013, which is an admitted fact between the parties, has crystalized the terms of contract between them and none of them can go out of the same. The alleged oral assurance given by the officials of MCF at the time of conduct of auction proceedings cannot bind the MCF for two reasons, firstly, once the contract has been signed between the parties on 12.04.2013, then oral evidence or assurance against the terms of written contract cannot be taken into consideration by this Authority on account of clear bar created by principles of jurisprudence, and secondly, there is nothing on record as to which officer gave the said alleged assurance and that whether he had the authority to give such assurance. The MCF is a corporate body and similarly, the complainant is also a Private Limited Company duly registered under the provision of Companies Act. Thus, officers or officials of both the parties to lis in the present proceedings cannot bind their respective principals by giving oral assurance or undertaking without there being any authority given to them by their respective principal.

63. In this connection, reference may also be made to the decision of *Shabi Construction company v. City and Industrial Corp. and Anr.*, (1995) 4 SCC 301. In this case also, the Hon'ble Apex court had emphasised that:

"....the doctrine of promissory estoppel cannot be invoked to compel the public bodies or the government to carry out the representation

S. Rathore

or promise which is contrary to law or which is outside their authority or power".

Therefore, it is not established that the MCF was obligated to honour the alleged statement made by an unidentified officer conducting the auction proceedings dated 14.03.2013.

64. Further, it is in common knowledge that the Government/State Agencies in order to compensate for unforeseen delays generally incentivize their auctions schemes by giving concessions in the form of deferred interest. In the instant case also, as the complainant was required to make arrangements for all requisite services on its own till such services are provided in the area by MCF by giving undertaking on 16.04.2013, incentives/concessions on instalments was also given to the complainant vide clause 1 of the allotment letter which categorically provides that interest on due instalment @15% p.a., shall be charged from the date of offer of possession after completing the development works at site. From the perusal of records, it is apparent that the complainant has availed aforementioned benefit/concession on interest on due instalments. There is nothing on record that the complainant has made the payment of any interest to the respondent on the amount that is due against it in favour of the respondent. The things do not rest here, as after taking possession of the plot, the complainant also raised considerable construction over the same and also received money from the sale of apartment/ villas to

Katwe

respective individual purchasers. Thus, it cannot be said that the complainant after making part payment to the respondent has got nothing in return for the same. In fact, the real situation is that the complainant on making part payment got the possession of the plot, constructed 203 apartments and 8 villas, raised money from allottees by selling 170 apartments and 2 villas, caused ostensible default in payment of instalments and also till date paid no interest on due instalments.

65. The main grouse/ grievance of the learned senior counsel for complainant is that a period of more than 7 years has lapsed from the date of contract dated 12.04.2013 and the development works have not been completed at the site as is also clear from the report of Local Commissioner dated 10.01.2022. Thus, complainant is entitled to delay interest, as envisaged under Section 18 of the Act of 2016. This argument cannot be accepted for the simple reason that possession of the plot stand delivered to the complainant in terms of the allotment letter dated 12.04.2013 on furnishing a conscious undertaking dated 16.04.2013 by choosing one of the options available to it and therefore, provisions of Section 18 (1) of the Act of 2016 can be of no avail to the complainant. For ready reference, Section 18 read thus:-

Section 18: Return of amount and compensation

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



(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

66. No doubt, infrastructure that was to be laid by the respondent is not complete in all aspects as is required as per provisions of the Act of 2016. It is a matter of common knowledge that it is after the complainant complete the construction at his plot and only thereafter, the respondent can give finishing touch to the infrastructure to be provided by it. Even, the Local Commissioner report does not say that there is absolutely no infrastructure at the spot and only some deficiencies in some of the facilities to be provided have been noticed. In case, complainant want

G. Rathore

compensation for monetary loss and loss of reputation, etc. suffered by it on account of these deficiencies it has the remedy to seek compensation from the respondent corporations as per the relevant provisions of the Act of 2016 and the Rules or Regulations made thereunder.

67. Keeping in view the facts and circumstances of the present case this Authority, in exercise of its mandate under Section 34(f) read with Section 37 of the Act of 2016 issues following directions:

- i. MCF to remove the deficiencies in development works in a time bound manner and submit a schedule for removing such deficiencies at the earliest, both to the Authority and the complainant.
- ii. Needless to observe that the respondent being also a promoter as per provision of Section 2(zk) of the Act of 2016, would also comply with the statutory provisions of the Act of 2016 such as registration of the project and other ancillary requirements.
- iii. Project branch to issue notice to MCF show causing as to why penalty should not be imposed on it for non-compliance of its obligations as a promoter as per provisions the Act of 2016 and the Rules or Regulations made thereunder.
- iv. Possession of the group housing plot no GH-2 was handed over to the complainant as per the terms of allotment and therefore the complainant is not entitled to delay interest as per section 18(1)

G. Rathee

of the Act of 2016 on the amount deposited as part payment against the allotted group housing plot.

68. Complaint **disposed of**. File be consigned to the record room.



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

