



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>1323 of 2021</b>
<b>Date of filing:</b>	<b>15.12.2021</b>
<b>Date of first hearing:</b>	<b>12.01.2022</b>
<b>Date of decision:</b>	<b>06.07.2023</b>

Aditi Singh,  
D/o Sh. Anil K S Panwar,  
R/o H. No. 508, Sector 6,  
Panchkula - 134109,

....COMPLAINANT(S)

VERSUS

Estate Officer, HUDA (Now HSPV)  
HUDA Office Complex, Sector 6,  
Panchkula - 134109,

....RESPONDENT(S)

**CORAM: Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Present:** Ms. Aditi Singh, complainant.

Mr. Arvind Sethi, Advocate, counsel for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 28.11.2021 has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 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 towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name of the project	Urban Estate, Pinjore
2.	RERA registered/not registered	Registered
3.	Unit no.	Plot no. 722, Sector - 30, Urban Estates, Pinjore, Panchkula.



4	Unit area	220.50 sq. mt
5.	Date of allotment	29.01.2015
6.	Due date of possession	29.01.2018
7.	Total sales consideration	₹50,71,500/-
8.	Amount paid by complainant	₹38,03,625/-
9.	Offer of possession	19.02.2018

### **B. FACTS OF THE CASE AS STATED IN THE COMPLAINT**

3. Complainant had deposited an amount of Rs. 5,07,200/- on 28.05.2014 in the nature of earnest money along with application for allotment of a plot to HUDA pursuant to its Scheme No. SC00000066 as advertised by it through its website and other media. The copy of the bank statement of the complainant evidencing the same is attached as Annexure P-1. Vide allotment letter dated 20.01.2015 a freehold basis residential plot no. 722, admeasuring 220.50 sq. mt in Sector-30, Urban Estate, Pinjore was allotted to the complainant. The copy of the allotment letter is attached as Annexure P-2.



4. Complainant had made a further payment of Rs. 7,63,718/- through DD, SBI, Churchgate, Mumbai to the Estate Officer, HUDA, Panchkula on 20.02.2015. The copy of the bank statement of the complainant evidencing the same is attached as Annexure P-3. With this payment, the condition of deposit of 25% of the total tentative price of Rs. 50,71,500/- as per the para 5 of the allotment letter was complied with by the complainant. Inter-alia, due to certain unavoidable circumstances, the payment of further installments could not be made by the complainant.

5. Thereafter, offer of possession letter dated 19.02.2018 was sent to email ID singhs.aditi@gmail.com from an email scandoc@huda.com which is attached as Annexure P-4. The said offer was ex-facie invalid because it was not accompanied by completion or part-completion certificate nor any reference was made therein that such certificate has been granted to the promoter. So, the complainant was not obliged to act upon the offer of possession.

6. Complainant had informed the respondent in 2019 about the change of her address to House No. 508, Sector-6, Panchkula and said change was effected in the records of respondent as well.

7. Respondent had issued a notice u/s 17 (2) of the HUDA Act, 1977 on 28.05.2021 in the capacity of Estate Officer, HUDA (not Haryana Shehri Vikas Pradhikaran as HUDA is now known) asking the complainant to appear for hearing





personally or through an authorized representative in his/her office on Saturday, 12.06.2021 at 11 A.M. This notice was sent at the erstwhile address of the complainant and came to her notice only on 12.06.2021. The notice is attached as Annexure P-5.

8. Complainant responded to the aforementioned notice through a communication sent on 21.06.2021 at e-mail ID of the respondent viz. eopklhsvp@gmail.com as elicited from the website of HUDA i.e. hsvphry.org since no contact details were mentioned in the notice dated 28.05.2021. The complainant also sent the said communication by post to the address HUDA Office Complex, C-3, Sector-6, Panchkula, Haryana-134115 as elicited from the HUDA website mentioned above.

9. Complainant in her abovementioned communication had requested the respondent to provide some other documents to verify the averments made in the notice u/s 17(2) and also for enabling her to file an effective reply in the matter. The copy of the communication/letter is attached as Annexure P-6. Respondent has, till date, neither responded to the complainant's reply sent on 21.06.2021 nor even provided the documents as requested by her.

10. As per para 7 of the allotment letter dated 20.01.2015, HUDA will pay interest @ 9% on the amount deposited by the complainant after the expiry of 3 years till the date of offer of possession. As per para 25 of the allotment letter, the



interest on delayed payment of installments payable to HUDA by the complainant is 15% per annum.

11. There exists a relation of promoter and allottee between the parties. Since the plot was allotted to the complainant in a project which respondent had not completed till the enforcement of RERA Act, 2016 the parties are bound by the provisions of RERA Act, 2016. 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. Therefore, there should be a parity between the rate of interest payable by the promoter and the allottee in respect of the defaults committed by either of them to the other. Such interest has to be fair and reasonable and in no case shall be more than the rate of interest payable by a bank to its investor.

12. The respondent in no case can claim interest from the complainant on the defaulted amount of installments at the rate exceeding 7% which was the maximum rate of interest payable to an investor as per norms prevalent in the banks during the years when the defaults on part of the complainant towards payment of outstanding installments occurred. For these reasons, the terms and conditions of the allotment letter dated 20.01.2015 issued by the respondent are not enforceable being against the tenets of law.

A handwritten signature in blue ink, appearing to be 'Jad', with a horizontal line underneath it.

13. Respondent in the notice u/s 17(2) of the HUDA Act, 1977 dated 29.05.2021 had demanded total dues of Rs. 58,62,231/- (excluding extension fees of Rs. 1102). This amount included the balance principal (Rs. 3803625) amount and the interest part. The interest part included therein is Rs. 20,58,606/- (Rs. 58,62,231/- - Rs 38,03,625/-). The respondent has not indicated in the notice as to how the amount of interest has been calculated at Rs. 20,58,606/-. Such amount of interest apparently reflects that the respondent had applied the rate of interest at 15% and, that too, at compound rate which being excessive, unreasonable and unfair, cannot stand the test of law. It rather vitiates the mandatory provisions of section 2(za) of the RERA Act.

14. Also, respondent was liable to pay interest to the complainant on account of its default in delivering possession within 3 years of the date of allotment. The possession can validly be offered only after obtaining a completion/part-completion certificate. The respondent has not made any statement in the 'offer of possession about obtaining of completion/part-completion certificate and therefore it can be assumed that no such completion certificate was available with the respondent till the date on which the offer of possession was sent to the complainant vide email dated 17.02.2018. In these circumstances, the complainant craves the indulgence of the Hon'ble Authority to direct the respondent to place the completion/part-completion certificate on record and for





paying the complainant the interest from 20.01.2018 on which date the 3 years' period within which the offer of possession was required to be made as per allotment letter had lapsed, to the date on which the completion/part-complete certificate was granted.

15. It is further submitted that respondent has provided a Username and Password to the complainant to access the information pertaining to the plot allotted to her. As per the details elicited by logging on to the portal, the dues payable by the complainant as on 28.11.2021 are Rs. 67,46,011/-. However, for the reasons discussed in preceding paragraphs, this amount is excessive, unreasonable and unjustified.

### **C. RELIEF SOUGHT**

16. The complainants in their complaint have sought following reliefs:

- A. To direct the respondent to charge only fair and reasonable interest from the complainant, for the default in payment of installments, which, in no case, shall exceed the rate of 7% per annum (simple) on the present.
- B. To grant a stay on further proceedings u/s 17 of the HUDA Act, 1977 as the complainant has arranged funds for payment of the balance dues and shall be discharging her liability of the principal amount and interest at the rate of 7% per annum;





C. Any other relief or claim which the Hon'ble Authority deems fit and appropriate in the facts of the case and to meet the ends of justice

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

17. Complainant was successful in draw of lots and a residential plot no. 722, Sector 30, Pinjore, measuring 220.50 sq. mt was allotted in favour of complainant vide letter no. 915 dated 20.01.2015 on a tentative cost of Rs. 50,71,500/-. The complainant accepted the allotment and deposited Rs. 7,60,675/- on 24.02.2015 and also submitted her affidavit.

18. After completion of work of basic amenities at site, it was decided to offer the possession of the plot to the allottees in Sector-30, Pinjore. Accordingly, the digitally signed offer of possession was created in the PPM in February, 2018 and sent to the complainant. It is categorically mentioned in letter of offer of possession that "This is a digitally signed document No signature required". Further, a public notice was also published in the leading newspapers of English as well as Hindi language, i.e., The Tribune, Dainik Bhaskar and Dainik Jagran and in this regard the publication was processed through Director Public Relations Department, Haryana vide memo no. 1594 dated 01.03.2018 in the month of March, 2018. Further, news items also appeared in the leading newspapers regarding the offer of possession. This public notice makes it clear to the allottee of Sector 30, Pinjore, Kalka Urban Complex that offer of possession of the plots allotted in Sector-30,



Pinjore Kalka Urban Complex has been generated with digital signatures and the same are available online in the "USERIDS of the respective allottees on HSVP website, i.e., [www.huda.org.in](http://www.huda.org.in) which can be accessed by the respective allottees through their respective ID's. A copy of public notice is attached as Annexure R-3

19. Possession of the plot was offered on 19.02.2018 to the complainant through digitally signed possession letter on PPM account and email was also sent to the complainant. The possession was offered after completion of all the basic amenities works as per regulations/ policy and letters of concerned electrical division dated 12.12.2017 and civil division dated 04.12.2017 are attached as annexure R-1 and R-2. A copy of the offer of possession letter is attached as Annexure R-4. Executive Engineer, HSVP Electrical Division, Panchkula vide letter dated 12.12.2017 informed that the electrical works have been completed in the area. The Executive Engineer, HSVP Division No. II, Panchkula informed vide letter dated 04.12.2017 that the civil works have been completed i.e., construction of road upto WBM/WMM, water supply, sewerage and storm water, drainage line have been completed in Sector-30, Pinjore Kalka Urban Complex. A copy of reports dated 12.12.2017 and 04.12.2017 are attached as Annexure R-1 and R-2. Complainant has failed to apply for the possession despite due intimation and knowledge.



20. No possession interest has been charged from the complainant against the installment due on 20.1.2016, 20.1.2017 and 20.1.2018. Since, the possession was digitally generated in the PPM, therefore, the date of offer of possession was considered as 19.02.2018. Therefore, the complainant became entitled to pay the interest on installment.

21. As per Section 2 (a) of HSVP Act, 1977 basic amenities include metalled roads, wholesome water, sewerage and electrification. It is these amenities which are to be provided when possession is offered as per regulations. Regulation 13 of Haryana Urban Development (Disposal of Land & Buildings), Regulations, 1978 provides that the possession of the land shall be delivered to the transferee or lessee as soon as the basic amenities within the area where the land is situated are completed. It was also supplemented by letter dated 16.04.2009 bearing Memo No. A-PHK-UB-1-2009/11563-85 issued by the Chief Administrator, HSVP, Panchkula, Haryana issued to all the Zonal Administrators and Estate Officers HSVP in the State stating therein that at the time of offer of possession, only the basic amenities, i.e., water supply, approach road, sewerage and electrification shall be made available in the sector. Hence, the possession dated 19.02.2018 digitally generated is valid and legal.

22. Allottee had the option either to pay 75 % amount in 60 days from date of issue of allotment letter and if allottees did not want to deposit the amount in 60





days time then in installments specified in allotment letter in which case installments were payable with interest. The payment of tentative price in installments is a matter of concession. Further, the allotment was subject to the provisions of Act, 1977 and regulations there under. Regulation 7-A of Regulations, 1978 provided that the payment of installments on due date is mandatory and allottee will be liable to pay the interest on delayed payment of installments. Same is also incorporated in clause 25 of the allotment letter. In the present matter, complainant made default in the payment of the consideration amount of the plot in question, the answering respondents served show cause notice under section 17(1) of the HUDA Act, 1977 vide office letter dated 31.03.2017 followed by notice under section 17(2) of HUDA Act, 1977, vide office letter dated 28.05.2021, giving an opportunity of being heard in the matter and calling upon the complainant to come present either in person or through a duly authorised representative on 12.06.2021 and further informing the complainant that outstanding dues against the site upto 28.05.2021 are Rs. 5862231/- and Extension fee Rs. 1102/- The copy of notice dated 28.05.2021 is annexed herewith as Annexure R-5.

23. That the complainant did not come present in the office of answering respondents to represent her case rather she preferred to send a reply vide her letter



dated nil which was received on 08.07.2021, wherein she requested to provide her the detailed information.

24. That since neither any satisfactory reply was received from the complainant nor the complainant appeared on 12.06.2021, the Estate Officer HSVP, Panchkula vide its letter dated 31.07.2021 ordered to impose a penalty of Rs. 5,96,163/- which shall be paid within a period of 30 days of issue of the letter. The copy of letter dated 31.07.2021 is annexed herewith as Annexure R-6.

25. Complainant has wrongly submitted that respondent can not charge interest exceeding 7%. However, the interest on delayed payment of installments was charged as per the terms and conditions of the allotment letter. Moreover as per Regulation 5 (7A) of Haryana Urban Development (Disposal of Land & Buildings), Regulations, 1978 provide that the payment of installment(s) on due date is mandatory. In case the payment of installment(s) is not made on due date, interest at the rate as may be decided by the Authority from time to time shall be chargeable on the delayed payment of installment(s) irrespective of the fact whether the possession has been offered or not. Hence, the installments were liable to be paid.

26. Complainant has further wrongly submitted in the complaint that the respondent was liable to pay interest to complainant on account of default in delivering the possession within 3 years of the date of allotment. Whereas, at the



time of possession only basic amenities were to be provided and this was made clear in the advertisement/ brochure. However for her own convenience and to mislead this authority, the complainant is not bringing the same to the notice of this authority. It was specifically mentioned in the notes mentioned in the brochure issued at the time of inviting the applications that the possession would be delivered within about 3 years of the date of allotment, however the same could be delivered earlier in case basic services are complete. It was specifically mentioned that at the time of delivery of offer of possession only the basic services, i.e., water supply, approach road, sewerage and electrification were required to be provided.

27. Further present complaint doesn't come within the preview of this Hon'ble Authority as the answering respondent is a statutory authority constituted under the "Haryana Shehri Vikas Pradhikaran " Act, 1977 which is a complete code in itself in order to meet out any eventuality. The Act specifically bar the jurisdiction of the civil court as well and the present complainant is also hit by the provisions of the Act of 1977 of the answering respondent and is liable to be dismissed on this count alone. Moreover the jurisdiction of any authority has been specifically barred by virtue of the terms and conditions of the letter of intent as well as terms mentioned in the broucher issued prior to inviting the applications and the complainant had already accepted the said terms and conditions. Hence the complaint before this Hon'ble authority is nothing but an abuse as well as misuse of the process of law.





28. Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) i.e., Act of 2016 received the assent of the President of India on the 25th March, 2016. The Government of Haryana through Department of Town and Country Planning, in exercise of the powers conferred by sub section(1) read with sub section(2) of section 84 of the Act, has notified Haryana Real Estate (Regulation and Development) Rules, 2017 vide notification dated 28.07.2017. The above notifications make it amply clear that the Act, 2016 was intended to have a prospective effect only and same were not applicable as on the date, i.e., 20.1.2015 when the complainant was allotted the plot No.722, Sector-30, Pinjore.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

29. During the oral arguments complainant submitted that in the present matter complainant has cleared her complete outstanding dues. These dues have been deposited under protest and subject to the outcome of the litigation pending before the Authority. As on date there are no outstanding dues against the complainant and the conveyance deed has been executed in favour of the complainant on 17.10.2022 (Annexure 2 of the written statement). Respondent in the reply has submitted that the Haryana Real Estate Regulatory Authority does not have jurisdiction to deal with the present matter since HSVP is governed by HSVP Act, 1977. In response, the complainant submitted that HSVP falls under the definition



of “promoter” under section 2 (zk)(iii)(b) as it is a development authority at whose disposal plots have been placed by the Government for sale. Moreover, project of the respondent promoter comes under the category of “on-going project” as the development works were yet to be completed on the date of commencement of RERA Act. Admittedly, civil and electrical work in the project were completed on 04.12.2017 and 12.12.2017. Furthermore, there is a relationship of allottee and promoter between the respondent-promoter and complainant. Hence, by virtue of Article 254 of the Constitution which provides that where provisions of the law made by the Parliament is repugnant to any provision of law made by the legislature of State, then the law made by parliament shall prevail, as RERA Act is a law made by the parliament whereas HUDA Act is a law made by the legislature of the State and in case of inconsistency between the two, former shall prevail. Further, Section 89 of RERA Act provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the provisions of the RERA Act are binding upon HSVP and the Hon'ble Authority has the jurisdiction to adjudicate the instant petition filed by the complainant and the present complaint is maintainable.

Second issue is with respect to rate of interest to be charged by HSVP. It was submitted by complainant that since, both complainant and respondent are bound by the provisions of RERA Act, rate of interest that shall be chargeable in



case of default be as per Section 2 (za) of the RERA Act. Section 2 (za) provides for parity between the rate of interest payable by promoter and the allottee in respect of default committed by either of them to the other. Hence, terms laid down in para 7 and 25 of the allotment letter are violative of Section 2(za) and deserves to be quashed.

Lastly, complainant submitted that a penalty to the tune of Rs. 5,93,163/- was imposed upon complainant vide order dated 31.07.2021 by HSVP without following the due process of law laid down under HUDA Act, 1977. Directly a show cause notice u/s. 17(2) of the HUDA Act was sent to her without serving a prior notice u/s. 17(1) and her reply to the show cause notice u/s. 17(2) was considered unsatisfactory and a penalty of Rs. 5,93,163/- was imposed upon her which is bad in law.

30. On the other hand, counsel for respondent reiterated that present complaint doesn't come within the preview of this Hon'ble Authority as the answering respondent is a statutory Authority constituted under the "Haryana Shehri Vikas Pradhikaran " Act, 1977 which is a complete code in itself in order to meet out any eventuality. The Act specifically bars the jurisdiction of the civil court as well and the present complainant is also hit by the provisions of the Act of 1977 of the answering respondent and is liable to be dismissed on this count alone. Moreover the jurisdiction of any authority has been specifically barred by virtue of the terms





and conditions of the letter of intent as well as terms mentioned in the broucher issued prior to inviting the applications and the complainant had already accepted the said terms and conditions.

#### **G. ISSUES FOR ADJUDICATION**

31. Whether the present complaint is maintainable before the Authority or not?
32. Whether the respondent for a default committed by complainant in payment of outstanding installments can charge interest at a rate more than what she is liable to pay to the complainant for a default on its part to deliver possession on time?
33. Whether levy of penalty by the Estate Officer u/s 17(2) on the complainant is lawful or not?

#### **H. OBSERVATIONS AND DECISION OF THE AUTHORITY**

34. After taking into consideration the facts and circumstances of the case and arguments put forth by both the parties, Authority observes that there are three main issues for adjudication in the present case as mentioned in para 31 to 33. Authority will deal with them one by one.

35. Firstly, whether the present complaint is maintainable before the Authority or not? In this regard the Authority observes, it needs to be examined whether respondent (HSVP) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the



complainant and respondent. For this purpose, definition of “promoter” under section 2(zk) needs to be perused. Definition is provided below:

(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

(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.



Plain reading of the definition given under section 2(zk) makes it clear that any development authority at whose disposal plots have been placed by the Government for sale is a promoter in respect of allottees of those plots. Here, HSVP is a development Authority that with the authority of Government of Haryana has issued allotment letter to complainant on freehold basis Residential Plot No. 722, of area 220.50 sq. mt in Sector-30, Urban Estate, Pinjore. Hence, HSVP is covered under the definition of promoter under section 2(zk).

36. In the present matter complainant was allotted Plot No. 722, of an area measuring 220.50 sq. mt in Sector-30, Urban Estate, Pinjore vide allotment letter dated 20.01.2015 by Estate Officer, HSVP, therefore falls within the ambit of definition of allottee.

Further, the plot was allotted by the respondent to the complainant-allottee, as per S.2(d) of the RERA Act, "allottee" is defined as follows:

*(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:*

As per Ss. 2(zj) & (zn) of the RERA Act. "project" & "real estate project" are defined respectively as follows:





*(zj) "project" means the real estate project as defined in clause (zn):*

*(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

A conjoint reading of the above sections shows that HSVP (erstwhile known as HUDA) is a promoter in respect of allottees of plots sold by it in its real estate project and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondent is established and the issues deals with real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

*An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory*



*authority and the adjudicating officer and for matters connected therewith or incidental thereto;*

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate i.e. plot, apartment or building, as the case may be and matters incidental thereto. In support of the same, Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III-Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule".*

The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: entry-6 and entry-7 ready with entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner

and facilitating the consumer/buyer to make informed choice. Therefore, the Authority has jurisdiction to decide the present matter.

37. Further, with respect of the contention of the respondent that HSVP is statutory authority constituted under and governed by "Haryana Shehri Vikas Pradhikaran " Act, 1977 which is a complete code in itself, and therefore HSVP Act, 1977 will prevail over any other law, Authority observes that as it has been made clear in the earlies paras that HSVP is a promoter and there exist a allottee-promoter relationship between the parties, and matter is related to real estate project, therefore, by virtue of section 89 of the Act, *“the provision of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”* Moreover RERA Act, 2016 is a law made by parliament and will prevail over law made by the legislature of State by virtue of Article 254 of the Constitution.

38. With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on date i.e. 20.01.2015 when the complainant was allotted plot no. 722, Sector-30, Pinjore, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus*





*State of Uttar Pradesh and others.* Relevant part is reproduced below for reference:-

"47. The legislative power to make the law with prospective/retrospective effect is well recognized and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.

48. The distinction between retrospective and retroactive has been explained by this Court in **Jay Mahakali Rolling Mills Vs. Union of India and Others**, which reads as under:-

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

49. Further, this Court in **Shanti Conductors Private Limited and Another Vs. Assam State Electricity Board and Others**, held as under:-

"67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.

68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the



*opinion dated 31-8-2016 [Shanti Conductors (P) Ltd. v. Assam SEB, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive."*

50. *In the recent judgment of this Court rendered in the case of **Vineeta Sharma Vs. Rakesh Sharma and Others'** wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:-*

*"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act."*

51. *Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.*

52. *The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were*





*ongoing and in cases where completion certificate has not been issued within fold of the Act.*

*53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*

*54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”*

39. With regard to second issue that whether the respondent for a default committed by complainant in payment of outstanding installments can charge interest at a rate more than what it is liable to pay to the complainant for a default on its part to deliver possession on time, it is admitted by the parties that the allotment of plot in favour of complainant was made on 29.01.2015 i.e., before the enactment of RERA Act of 2016, however it is also not disputed by the parties that





civil and electrical works in the project were completed on 14.12.2017 and 12.12.2017 meaning thereby that the project was an “ongoing project” on the date of enactment of the RERA Act, 2016 and provisions of RERA Act 2016 are applicable in respect to the present real estate project/plot. This issue of applicability of provisions of RERA Act 2016 has been settled by the Hon’ble Supreme Court in its landmark judgment of “*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* ” in following paragraphs:-

*“52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*

*53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*



*54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”*

Section 2(za) provides for the definition of rate of interest payable by allottee or promoter, in case of default. S. 2(za) is reproduced below:

*2. (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;*

Bare reading of section 2 (za) makes it clear that there should be a parity between the rate of interest payable by the promoter and the allottee in respect of the defaults committed by either of them to the other. Further, such interest has to be fair and reasonable and in no case shall be more than the rate of interest payable by



a bank to its investor/lender. This definition of interest is based on the principle of equity. Section 2 (za) is to be read with Rule 15 of HRERA Rules, 2017 that provides a prescribed rate of interest, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % as on the period of default. Thus, the clause providing for the rate of interest @ 15% to be paid by the complainant allottee in case of default and interest @ 7% to be paid by respondent in case of its failure to fulfill its obligation are arbitrary and inconsistent with the provisions of RERA Act, 2016 regulating the contractual relationship between the complainant and respondent. Accordingly, in light of provisions of section 89 the definition of interest as provided u/s 2 (za) read with Rule 15 shall have an overriding effect over the arbitrary rate of interest as provided in the contract between the complainant and respondent. Complainant shall be liable to pay interest as provided in section 2 (za) read with Rule 15 for any default in payments.

40. Lastly, with respect to the issue of whether levy of penalty by the Estate Officer u/s. 17(2) on the complainant is lawful or not? Authority observes as per section 17(1), where any transferee makes default in the payment of any consideration money, or any installment, on account of the sale of any land or/and building, the Estate Officer may, by a notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty, which shall not exceed ten per cent of the amount due from the transferee, be not imposed upon him. As





per section 17(2) of the HSVP Act, 1977, after considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may for reasons to be recorded in writing make an order imposing the penalty. Complainant stated that Estate Officer had issued a notice u/s 17(2) dated 29.05.2021 (marked as Annexure P-5 of the Complaint) to the complainant stating that a SCN u/s 17(1) was "served" upon her vide letter No.Z0004/EO012/UE038/US171/0000000097 dated 31.03.2017. It was further stated therein that her "reply" in this regard has been considered and found to be unsatisfactory and an opportunity of being heard was being given to her to either appear in person or through a duly authorised representative on 12.06.2021 at 11 AM in the O/o the Estate Officer. However, no such notice u/s. 17(1) was served upon her. No proof of service has been placed on record by the respondent as well.

Authority observes that respondent has failed to show that a notice dated 29.05.2021 u/s. 17(1) was served upon the complainant as a prior condition for notice u/s. 17(2) of HSVP Act. Since, the due procedure of law laid down under section 17 was not followed by the Estate Officer, therefore, levy of penalty of Rs. 5,93,163/- is not justified. Admittedly complainant has cleared all outstanding dues including penalty of Rs. 5,93,163/- to the respondent under protest. Since, due process of law under section 17 of HSVP Act and principle of natural justice has



not been followed while imposing this penalty, the Authority quashes the same. Respondent is directed to refund the amount within 90 days.

### **I. DIRECTIONS OF THE AUTHORITY**

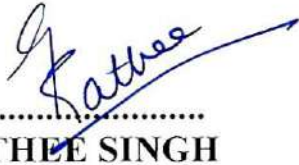
41. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund Rs. 5,93,163/- to the complainant within 90 days from uploading of this order.
- (ii) In case any interest on defaulted amount is payable by the complainant, said interest has to be in terms of section 2 (za) r/w Rule 15 of HRERA Rules, 2017 i.e., SBI MCLR + 2% as on date of default. Authority directs the respondent to recalculate the interest on delayed payments by the complainant in terms of ibid provisions of RERA Act and rules made thereunder, convey the same to the complainant and refund the excess amount so arrived.
- (iii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of



Haryana Real Estate (Regulation & Development) Rules, 2017  
failing which legal consequences would follow.

42. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



.....  
**Dr. GEETA RATHEE SINGH**  
**[MEMBER]**



.....  
**NADIM AKHTAR**  
**[MEMBER]**