BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**5239 of 2022**
First Date of Hearing:		**20.10.2022**
Order reserved on:		**17.08.2023**
Order Pronounced on:		**21.09.2023**

Smt. Reena Singhal
R/o: - KI-55, Kavi Nagar, Near Sarvodya Hospital, Ghaziabad-201002. **Complainant**

Versus

1. M/s Ramprashtha Developers Private Limited.
2. M/s Ramprashtha Promoters & Developers Private Limited. **Respondents**

Regd. Office at: - Plot No. 114, Sector-44, Gurugram- 122002

CORAM:
Shri Vijay Kumar Goyal — Member

APPEARANCE:
Shri Yogesh Kumar Goyal (Advocate) — Complainant
Ms. R Gayatri Mansa (Advocate) — Respondent

ORDER

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

responsibilities and functions to the allottee as per the agreement for sale executed *inter se* them.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	Cannot be ascertained
2.	Project area	Cannot be ascertained
3.	plot no.	N.A.
4.	Unit area admeasuring	300 sq. Yds. (Page no. 10 of the complaint)
5.	Date of booking application	N.A.
6.	Welcome letter	N.A.
7.	Provisional allotment letter	31.10.2006 (Page no. 15 of the complaint)
8.	Date of execution of plot buyer's agreement	Not executed
9.	Possession clause	N.A.
10.	Due date of possession	Cannot be ascertained
11.	Total sale consideration	Rs.30,00,000/- (As per page no. 11 of complaint)

12.	Amount paid by the complainant	Rs.8,00,000/- (As per page no. 15 of complaint)
13.	Occupation Certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

a. That the complainant has booked a plot in the project of respondent company at sector-37D, Gurugram and was allotted a plot measuring 300 sq. yards in the said project vide provisional allotment letter dated 31.10.2006. The total sale consideration of the plot was Rs.30,00,000/- against which she has paid Rs. 8,00,000/- through cheque as evident from the documents annexed with the complaint.

b. That the complainant continued to pursue the respondent for formal allotment of plot and possession thereof by going to its office and also communicated with the representatives of respondent on phone, but no response was received from it. Hence, the complaint vide email dated 30.06.2022 requested the respondent for handing over of possession of the plot or refund of the paid-up amount along with interest. But the respondent did not pay any heed to the just and genuine request of the complainant.

c. That about 16 years have passed but still neither the possession of the plot was handed over nor any refund was made in her account. Hence, the complainant has filed this complaint seeking refund of her hard-earned money along with interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

   I. Direct the respondent to refund the entire amount i.e., Rs.8,00,000/- to the complainant along with interest @18% p.a. from the date of respective payments till its complete realization.

D. Reply by the respondent no. 2:

5. The respondent no. 2 has contested the complaint on the following grounds: -

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

   ii. That no documents have been submitted by the complainant in support of the time for possession and as per the complainant own averments the plot was required to handover in two years period i.e., in October 2008. Hence, it is submitted, without admitting to such date of handover of possession cited by the complainant herein, even if the date of possession was to be construed in October 2008, the period of limitation has come to an end in the year October 2011.

   iii. That without prejudice to the above, it is further submitted that the complainant is not "Consumer" within the meaning of the Consumer Protection Act, 2019 since their sole intention was to make investment in a futuristic project of the respondent only to reap profits at a later stage when there is increase in the value of flat at a future date which was not certain and fixed. Neither there

was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.

iv. That the complainant having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project. She has no intention of using the said flat for their personal residence or the residence of any of their family members. If the complainant had such intention, she would not have invested in futuristic project. The sole purpose of the complainant was to make profit from sale of the flat at a future date and now since the real estate market is seeing downfall, the complainant cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent no. 2. It is submitted that the complainant having purely commercial motives made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said apartment and therefore, the complaint being not maintainable must be dismissed in limine.

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

vi. That the complainant has approached the respondent no. 2 office in August/September 2006 and have communicated that the complainant interested in a project which is "not ready to move"

and expressed their interest in a futuristic project. It is submitted that the complainant was not interested in any of the ready to move in/near completion projects of the respondent no. 2. It is submitted that on the specific request of the complainant, the investment was accepted towards a futuristic project and no commitment was made towards any date of handover or possession since such date was not foreseeable or known even to the respondent no. 2. Now, the complainant is trying to shift the burden on the respondent no. 2 as the real estate market is facing rough weather.

vii. The complainant knowingly invested in an undeveloped land in a futuristic area where on the date of investment by the complainant, even the zoning plans were not sanctioned by the Government. It is understood that the applicants are educated and elite individuals and had complete understanding of the fact that unless zoning plans have been approved their investment is in the shape of an undeveloped agricultural land; however as and when zoning plans have been approved, it will be possible to implement the development of a residential plotted colony in the area and the investment of the complainant will appreciate substantially. This clearly shows that the complainant had sheer commercial motives. It is submitted that an investor in a futuristic undeveloped plot cannot be said to be a genuine buyer by any standards.

viii. That it is submitted that the statement of objects and reasons as well as the Preamble of the said Act categorically specify the objective behind enacting the said Act to be for the purpose of protecting the interests of consumers in the real estate sector.

However, the present complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the RERA. The present complainant is only an investor in the present project who has purchased the present property for the purposes of investments/commercial gain.

ix. That since the RERA Act does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 1986 (hereinafter referred to as the CPA). That the plain reading of the definition of the term "Consumer" envisaged under the CPA makes it clear that the present complainant does not fall within the walls of the term "Consumer". That further the complainant is a mere investor who has invested in the project for commercial purposes.

x. That further the complainant is already in ownership of one property which the complainant has materially concealed herein. Hence, by any standard of imagination, the present complainant cannot to be said to have purchased the present property for personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or gain, hence, the complainants are plainly investors who have filed the present complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, the complainant cannot be said to have approached this Authority with clean hands and have approached this Authority only with malafide intention to harass the respondent no. 2 in the most harm causing way possible.

xi. That the respondent no. 2 had to bear with the losses and extra costs owing due delay of payment of installments on the part of the complainant for which they are solely liable. However, the respondent no. 2 owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent no. 2 constantly strived to provide utmost satisfaction to the buyer/allottee. However, now, despite of its efforts and endeavors to serve the buyer/allottee in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainant.

xii. That from the initial date of booking to the filing of the present complaint, the complainant has never raised any issues or objections. Had any valid issue been raised by complainant at an earlier date, the respondent no. 2 would have, to its best, endeavored to solve such issues much earlier. However, now to the utter disappointment of the respondent, the complainant has filed the present complaint based on fabricated story woven out of threads of malice and fallacy.

xiii. That further, the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainant had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent no. 2 and outside the purview of consumer courts and in further view of the fact the complainant had knowingly made an investment in a

future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval of the layout plans which is beyond the jurisdiction of this authority and hence the complaint is liable to be dismissed on this ground as well.

xiv. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent no. 2 as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainant while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting document in the complaint which can establish that the respondent no. 2 had acted in a manner which led to any so-called delay in handing over possession of the said flat. Hence the complaint is liable to be dismissed on this ground as well.

xv. The respondent no. 2/promoter was owner of vast tracts of undeveloped land in the revenue estate of Villages Basai, Gadauli Kalan and falling within the boundaries of Sectors 37C and 37D Gurugram also known as Ramprastha City, Gurugram.

xvi. That the delay has occurred only due to unforeseen and unpredictable circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the

agreed construction schedule resulting into unintended delay in timely delivery of possession of the plot for which respondent no. 2 cannot be held accountable. However, the complainant despite having knowledge of happening of such Force Majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondent with a wrongful intention to extract monies. Thus, in view of the submissions made above, no relief can be granted to the complainant.

6. The present complaint has been filed by the complainant against two respondents i.e., M/s Ramprastha Developers Pvt. Ltd. as R1 and M/s Ramprastha Promoters and Developers Pvt. Ltd. as R2. The reply has been filed by the R2 while the receipt of payment has been issued by R1 only. All the communications were made by the complainant through e-mail to the R1. However, reply to the said e-mail was made by R2 on behalf of the respondents. The registered office address of both the respondents as mentioned in complaint is same. Further, the address mentioned by Sh. Varun, Authorized Representative of the R2 as mentioned in the affidavit dated 19.10.2022 is also same as mentioned in the complaint but he has not distinguished the role and responsibilities between R1 and R2 and both respondents are associated company having same address and hence both are jointly and severally responsible to the complainant-allottee.

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

submission made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

The respondent has raised a preliminary objection regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

> ***Section 11.....***
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*
>
> ***Section 34-Functions of the Authority:***

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and*** *reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

F. I Objection regarding the complainant being investor.

13. The respondent has taken a stand that the complainant is the investors and not consumer. Therefore, she has not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the documents placed on file, it is revealed that the complainant is buyer and paid total price of Rs.8,00,000/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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

F. II Objection regarding complaint barred by Limitation Act, 1963

14. Another contention of the respondent is that if the date of possession was to be construed in October 2008, the period of limitation has come to an end in the year October 2011. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 006000000021137 titled as ***M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others*** which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

E. Findings on the relief sought by the complainant

E. I Direct the respondent to refund the entire amount i.e., Rs.8,00,000/- to the complainant along with 10% interest from the date of respective payments till its complete realization.

15. The complainant submits that vide receipt dated 31.10.2006, she had paid an amount of Rs.8,00,000/- to the respondent/promoter and the same was confirmed by the respondent and promised the allotment of a plot admeasuring 300 sq. yards. in any of the future project of the respondent company located in Gurugram. Despite repeated follow up by complainant with the respondent /promoter vide telephonic conversations and email dated 30.06.2022 neither any allotment letter was issued in respect of the aforesaid plot, nor the respondent has finalized anything regarding specify the said project till date. The complainant due to the neglectful behaviour of the respondent filed the present complaint pleading for refund along with interest before this authority.

16. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

> *"Every promise and every set of promise forming the consideration for each other is an agreement."*

17. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

> *"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not herby expressly declared to be void."*

18. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. The holders of those receipt/allotments are harassed lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre-Rera cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

19. But the document/receipt so issued in favour of a person can be termed as an agreement for sale to drag the developer before RERA Authority and compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases

that the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allotee to the promoter. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allotee.

20. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest at the prescribed rate as provided under section 18(1)(b) of the Act. Sec. 18(1)(b) of the Act is reproduced below for ready reference.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -*
> *(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."*
>
> ***(Emphasis supplied)***

21. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate of interest 18%. However, the allottee is seeking refund of the amount paid by her with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

23. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.09.2023 is **8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%.**

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

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

25. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within her right for seeking refund under section 18(1)(b) of the Act, 2016.

26. The instant matter falls in the category where the promoter has failed to allot a plot/unit in its any of the upcoming project as detailed earlier despite receipt of Rs.8,00,000/- made in the year 2006. So, the case falls under section 18(1)(b) of the Act of 2016.

27. In the instant matter, even after lapse of 16 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter- se parties. The respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.

28. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That

knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.

29. The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that *"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. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.***

30. In view of the above-mentioned reasoning, the date of booking is to be treated as provisional allotment letter, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 31.10.2009.

31. Moreover, the authority observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

> *".... The occupation certificate is not available even as on date, which* ***clearly amounts to deficiency of service****. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

32. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for

sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of provisional allotment letter or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @ 10.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F. Directions of the authority

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

i. The respondent/promoter is directed to refund the amount i.e., Rs.8,00,000/- received by it from the complainant along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules,

2017 from the date of each payment till the actual date of refund of the deposited amount.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.09.2023