

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Date of decision: 24.01.2024

NAME OF THE BUILDER		M/s Ramprastha Developers Private Limited	
PROJECT NAME		"Ramprastha City"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7278/2022	Uma Devi Lakhotiya V/s M/s Ramprastha Developers Private Limited	Prashant Khatana Advocate (Complainant) R. Gayatri and Navneet Kumar Advocates (Respondent)
2.	CR/7279/2022	Deepika Lakhotiya V/s M/s Ramprastha Developers Private Limited	Prashant Khatana Advocate (Complainant) R. Gayatri and Navneet Kumar Advocates (Respondent)

CORAM:

Ashok Sangwan

Member

HARERA
ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ramprastha City" (Residential plotted colony) being developed by the same respondent/promoter i.e., M/s Ramprastha Developers Private Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of plot in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the plots in question, possession along with delayed possession charges along with interest and other.
3. The details of the complaints, reply to status, plot no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Ramprastha City", Sectors 92, 93 & 95, Gurugram, Haryana.
Project area	123.5687 acres
DTCP License No.	44 of 2010 dated 09.06.2010
Name of Licensee	valid upto 08.06.2016 Licensee- Ramprastha Housing Pvt. Ltd. and others
RERA Registration	Registered vide no. 13 of 2020 dated 05.06.2020
Possession Clause: -	Not Provided



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Plot No.	Date of execution of plot buyer's agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/7278/2022 Uma Devi Lakhotiya V/s M/s Ramprastha Developers Private Limited Date of Filing of complaint- 17.11.2022	Reply received on 05.04.2023	Not allotted	10.05.2012 (Page no. 128 of the complaint)	10.05.2015 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]	TSC: - 30,00,000/- + EDC/IDC and other charges payable to government AP: - 30,00,000/- (as per agreement dated 10.05.2012 on page 129 of complaint)	Allotment of 300 sq. yards plot, Possession along with delayed possession charges
2.	CR/7279/2022 Deepika Lakhotiya V/s M/s Ramprastha Developers Private Limited Date of Filing of complaint- 17.11.2022	Reply received on 05.04.2023	Not allotted	10.05.2012 (Page no. 128 of the complaint)	10.05.2015 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]	TSC: - 30,00,000/- + EDC/IDC and other charges payable to government AP: - 30,00,000/- (as per agreement dated 10.05.2012 on page 129 of complaint)	Allotment of 300 sq. yards plot, Possession along with delayed possession charges

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against allotment of plots in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/7278/2022 titled as Uma Devi Lakhotia V/s M/s Ramprastha Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details

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

CR/7278/2022 titled as Uma Devi Lakhotia V/s M/s Ramprastha Developers Private Limited.

S. N.	Particulars	Details
1.	Name of the project	"Ramprastha City", Sectors 92, 93 & 95, Gurugram, Haryana
2.	Project area	123.5687 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010 valid upto 08.06.2016



5.	Name of licensee	Ramprastha Housing Pvt. Ltd. and others
6.	RERA Registered/ not registered	Registered vide no. 13 of 2020 dated 05.06.2020
7.	RERA registration valid up to	31.12.2024
8.	Plot no.	Not allotted
9.	Plot area admeasuring	300 sq. Yds. (Page no. 129 of the complaint)
10.	Date of execution of agreement	10.05.2012 (Page no. 128 of the complaint)
11.	Possession clause	Not Provided
12.	Due date of possession	10.05.2015 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
13.	Total sale consideration	Rs.30,00,000/- + EDC/IDC and other charges payable to government [As per agreement dated 10.05.2012 on page 129 of complaint]
14.	Amount paid by the complainant	Rs.30,00,000/- [As per agreement dated 10.05.2012 on page 129 of complaint]
15.	Occupation certificate /Completion certificate	Not received
16.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. The complainant booked a plot in the year 2012, vide agreement dated 10.05.2012, measuring 300 sq. yds. with the respondents in Sectors 92 and 95 of Gurgaon, Haryana in a township being developed by the respondent. The project was to be launched shortly and possession of the plot was to be given within a reasonable time from the date of execution of the agreement.

- II. That the complainant had paid an amount of Rs.30,00,000/- at the time of execution of the agreement on the written assurance that the possession of the booked plot would be delivered within a reasonable period of time and the complainant chose to trust the respondent in view of its then prevalent reputation in the market and thus parted with her hard-earned money.
- III. The said project has been launched, but even after expiry of more than ten years of payment and agreement, the allotment and possession has not been offered to the complainant. The agreement executed between the parties clearly provides that in case of delay in launch of township and consequent lack of interest by the complainant herein, the respondent will pay the amount equivalent to the prevailing market rate in the area.
- IV. The conduct of the respondent in not offering the possession to the complainant of her plot even more than ten years after the acceptance of the total consideration amount clearly speaks of gross deficiency in service and one which amounts to unfair and restrictive trade practice.
- V. That a letter dated 10.10.2017 was sent by the complainant to the respondent seeking allocation of the plots or payment of Rs. 1.5 Crores to the complainant if they fail to allocate her plot within the next 15 days. No response was forthcoming from the respondents to this letter. The respondent kept on corresponding over the phone and even met the AR of complainant a few times, but they were not willing to adhere to the contract and compensate the complainant at the agreed market rate of her plot on account of their gross deficiency in service in not delivering the possession to the complainant within reasonable time and instead continued making lame excuses to buy time.

- VI. That in March 2019, Mr. Saurabh Rana (Director of respondent) during conversation with the authorised representative of the complainant offered an alternative plot of 600 sq. yds. instead of two booked plots of 300 sq. yds. (one plot of 300 sq. yds. was booked by daughter of the complainant) and verbally asked for Preferential Location Charges and several other charges in gross violation of the agreement but did not make an offer in writing just to further buy time. But the same was not acceptable to the complainant who either wanted immediate delivery of the booked plot or compensation at prevailing market rates as agreed in the agreement. After several physical visits to the respondent's office and several requests, the respondent gave a written offer to the complainant which was not very clear in terms and conditions and also in violation of the agreement. Accordingly, the complainant gave a written reply to the offer of one alternative plot of 600 sq. yds. instead of two booked plots of 300 sq. yds. and after that the respondent became quiet.
- VII. That the complainant undertakes to bear the External and Internal Development Charges (EDC/IDC) of the booked plot once the land is formally allotted to her and upon possession of the same since already 10 years have passed by and the conduct of the respondent has rather been to cheat and harass the complainant. However, the respondent via their associates and their group companies are selling plots in the same project to the new buyers, obviously at the much higher rates since the prices have multiplied manifold over the period of time and they have been mistreating and defrauding their older buyers such as the complainant herein.

VIII. The complainant, after losing all the hope from the respondent and also losing considerable amount of money, is constrained to approach this Authority for redressal of her grievance.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)

i. Direct the respondent to allot and handover the possession of the plot of 300 sq. yards in conformity with the agreement and to pay interest on the amount paid.

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

D. Reply by the respondent.

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

i. That the complainant has approached the respondent in the year 2012 to invest in the future potential project of the respondent named "Ramprastha City" located in Sector 92 and Sector 95, Gurugram against which a tentative registration was issued after receipt of a payment of Rs.30,00,000/- for booking a plot of 300 sq. yds. and it was also mentioned that a specific plot number shall be earmarked once the zoning plans have been approved by the concerned authorities. The complainant has been made clear about the terms and conditions at the time of booking of the plot itself.

ii. That the complainant has paid an amount of Rs.30,00,000/- for plot which is part or total consideration of the plot. It is submitted that the said payments were not full and final payments and further payments inter alia towards government dues on account of EDC/IDC charges are

- payable at the time of allotment of plot and execution of plot buyer agreement.
- iii. That further no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the Authority which is within the knowledge of the complainant.
 - iv. That there is no obligation on the part of the respondent to allot or handover any plot to the complainant since the complainant has failed to provide any evidence of execution of plot buyer's agreement in her favour.
 - v. That the complainant was never interested in fulfilling the necessary formalities towards booking of the said plot. Neither the complainant has made any further payment for plot as such in "Ramprastha City" nor did she submit any application for the same. It is apparent that the complainant never turned up for the completion of the formalities.
 - vi. 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. The respondent had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainant towards development charges, EDC/IDC etc., but the complainant was duly informed that such charges shall be payable as and when demands will be made by the government.



- vii. That the complainant cannot be said to be genuine consumer by any standards; rather she is a mere investor in the futuristic project of the respondent. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.
- viii. That the complainant is not entitled to claim possession as claimed by her as the present complaint is clearly time barred. It is submitted that the complainant has itself not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. The objections to the same were to be raised in a time bound manner.
- ix. That there is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. 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.
12. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

14. 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

16. 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.

F. Findings on the objections raised by the respondent

F.I. Objections regarding the complainant being investor.

17. The respondent has taken a stand that the complainant is an investor and not consumer and therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer 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 he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the agreement executed between the parties, it is revealed that the complainant is a buyer and paid total price of Rs.30,00,000/- to the promoter towards purchase of a plot in the project of the promoter. 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;"

18. In view of above-mentioned definition of "allottees" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is an allottee as vide agreement dated 10.05.2012, the promoter has agreed to allot a plot admeasuring 300 sq. yards to the complainant. 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 maintainability of complaint.

19. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainant has approached the respondent in the year 2012 to invest in one of the futuristic projects of the respondent situated in Gurugram. They have paid a booking amount of Rs.30,00,000/- on 09.05.2012. The respondent further submitted that the complainant has itself not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. The objections to the same were to be raised in a time bound manner. Hence, the complaint is not maintainable on the above-mentioned ground.

20. On consideration of the documents available on record and submissions made by the party, the authority observes that the project in question is an ongoing project, and the respondent/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

21. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
22. Moreover, it is observed that vide agreement dated 10.05.2012, it was agreed between the parties that the promoter shall give possession of a plot having size of 300 sq. yards to the complainant on launch of the said colony in Sector 90 and 95 of Gurgaon. Further, it was agreed that on completion of the process of allotment to all allottees, the promoter will get the plot registered in name of the complainant on payment of stamp duty and other charges payable to the government. However, despite receipt of full consideration amount from the complainant back in 2012 against the booked plot except stamp duty and other charges payable to the government, the respondent-promoter has not even allotted a specific plot to the complainant and also no effort has been made by it to get the



plot registered in her name till date. As the respondent has failed to handover the possession of the allotted plot to the complainant and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduced as under for ready reference: -

22. Continuing breaches and torts-

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

23. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint barred by limitation is hereby rejected.

F.III Objections regarding the circumstances being 'force majeure'.

24. The respondent contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals, passing of an HT line over the layout, road deviations and depiction of villages etc. which were beyond the control of respondent. However, no document in support of its claim has been placed on record by the respondent. Hence, all the pleas advanced in this regard are devoid of merits. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Therefore, the respondent cannot take benefit of its own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainant.

G.I The respondent be directed to allot and handover possession of the plot in conformity with the agreement.

25. The complainant has booked a plot admeasuring 300 sq. yards in the project of respondent named "Ramprastha City" located in Sector 92, 93

and Sector 95, Gurugram by making a payment of Rs.30,00,000/- vide receipt dated 09.05.2012. Thereafter, an agreement was executed between the parties on 10.05.2012, vide which it was provided that the promoter has developed a township in Sector 92 & 95 of Gurgaon and is agreed to sale a plot of 300 sq. yards to the complainant on launch of the said project. Further, it was agreed that on completion of the process of allotment to all allottees, the promoter will get the plot registered in name of the complainant on payment of stamp duty and other charges payable to the government. However, despite receipt of full consideration amount from the complainant back in 2012 except stamp duty and other charges payable to the government, the respondent-promoter has not even allotted a specific plot to the complainant and also no effort has been made by it to get the plot registered in her name till date. Thus, in view of the agreed terms of the agreement dated 10.05.2012 and Section 11(4)(a) of the Act of 2016, the respondent-promoter is directed to allot a specific plot number to the complainant within a period of one month and handover possession of allotted plot admeasuring 300 sq. yards in her favour in the said project after obtaining CC/part CC from the competent authority.

- G. II Direct the respondent to pay interest on the amount paid as per Act.**
26. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."



27. Clause 6 of the agreement dated 10.05.2012, provides for the time period of handing over possession and the same is reproduced below:

Clause 6

*"That the first party promise to give possession of a plot size of 300 Sq. Yds to the second party **on launch of the said colony** in township in sector -92 & 95 of Gurgaon".*

28. The incorporation of such clauses is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee. The incorporation of such clause in the agreement by the promoter is just to evade the liability towards timely delivery of subject plot and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines. However, the respondent has cleverly omitted to mention the due date for handing over of possession. Therefore, the due date has been calculated keeping in view the judgment of 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:

"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. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014."

29. In the instant case, the promoter has agreed to allot a plot in its project vide agreement dated 10.05.2012. In view of the above-mentioned reasoning, the date of signing of the agreement to sell ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the plot comes out to be 10.05.2015.

30. Payment of delay possession charges at prescribed rate of interest:

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

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

31. 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.
32. 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., 24.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
33. 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;"*

34. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to her in case of delayed possession charges.
35. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The possession of the plot was to be delivered by 10.05.2015. However, the respondent has not even allotted a specific plot number to the complainant despite receipt of considerable amount of money from her and has also failed to handover possession of the plot till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted plot to the complainant as per the terms and conditions of the agreement dated 10.05.2012 executed between the parties. Further no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.



36. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @10.85% p.a. w.e.f. 10.05.2015 till actual handing over of possession or offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority or, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority

37. 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 allot a specific plot number to the complainant admeasuring 300 sq. yards as agreed between the parties vide agreement dated 10.05.2012 within a period of one month.
- ii. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 10.05.2015 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The respondent shall not charge anything from the complainant which is not part of the agreement to sell dated 10.05.2012.
- iv. The respondent/promoter is directed to offer possession of the allotted plot within 30 days after obtaining completion certificate/part



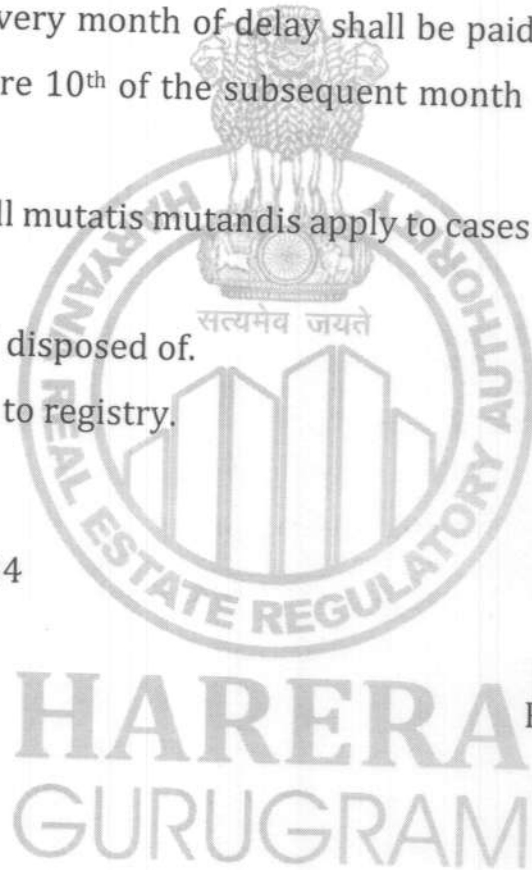
HARERA
GURUGRAM

Complaint No. 7278 of 2022 and
1 other

completion from the competent authority. The complainant w.r.t. obligation conferred upon her under section 19(10) of Act of 2016, shall take the physical possession of the subject plot, within a period of two months of the completion certificate.

- v. The arrears of such interest accrued from due date of possession of each case till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. Complaints stand disposed of.
40. File be consigned to registry.

Dated: 24.01.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram