

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

Complaint no. : 2323 of 2022
First Date of Hearing: 26.08.2022
Date of Decision: 16.11.2023

Sh. Parveen Kumar Sood

R/o:- H. No. B-167, Freedom Fighter
Enclave, Neb Sarai, South Delhi-110068.

Complainant

Versus

1. M/s Ramprastha Estates Private Limited.
2. M/s Ramprastha Developers Private Limited.
3. M/s Ramprastha Promoters and Developers Private Limited.

Respondents

Regd. Office at: - C-10, C Block Market,
Vasant Vihar, New Delhi-110057

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

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Rohit Taneja (Proxy Counsel)

Ms. R Gayathri Manasa (Advocate)

Complainant

Respondents

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. (As per page no.8 of the complaint)
5.	Date of booking	14.09.2010
6.	Welcome letter	N.A.
7.	Date of execution of plot buyer's agreement	Not executed
8.	Possession clause	N.A.
9.	Due date of possession	14.09.2013 (Note: Due date to be calculated 3 years from the date of booking i.e., 14.09.2010 in the absence of BBA)
10.	Total sale consideration	Rs.25,00,000/- (As per page no.4 of the complaint)
11.	Amount paid by the complainant	Rs.25,00,000/- (As per page no.15 of the complaint)
12.	Occupation Certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -
- i. That the complainant is an allottee of residential plot admeasuring approximately 300 sq. yards by the respondent.
 - ii. That the respondent had advertised themselves as a very ethical and promising business group that lives onto its commitments in delivering its projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new project always commits and promises to the targeted consumer that his space will be completed and delivered within the time frame agreed initially in the agreement while selling the developed residential plots to him. The respondent also assured to the consumers including the complainant that the respondent has secured all the necessary sanctions and approvals from the appropriate authorities for completion of the real estate project sold by them to the consumers in general.
 - iii. That the respondent was very well aware of the fact that in today's scenario looking at the status of the real estate projects in India, especially in NCR, the key factor to sell any residential/commercial spaces, is the delivery of completed project within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing any space. The respondent therefore used this tool, which is directly connected to emotions of gullible consumers including the complainant, in its marketing plan and always represented and warranted to the consumers that the developed plots will be delivered within the agreed timelines.
 - iv. The respondent had also shown the brochures and advertisement material of the said project to the complainant and assured that the

allotment letter and plot buyer's agreement for the said project would be issued to the complainant upon payment of booking amount in terms of the payment plan. Accordingly, the complainant after going through the detailed brochure of the said project and upon relying on the representations and warranties of the respondent and the brand value associated with the respondent as a part of Ramprastha Group, booked a residential plot of 300 sq. yds. in the project being developed by the respondent for a total consideration of Rs.25,00,000/-. That pursuant to the aforesaid booking an amount in tune of Rs.25,00,000/- had been paid by the complainant through cheques dated 14.09.2010 and 21.09.2010 and the same has been acknowledged by the respondent.

- v. That the complainant made payments towards sale consideration in accordance with the requirement of the respondent and was willing to make further payments for execution of plot buyer's agreement, however, to the disappointment of the complainant, the respondent failed to execute plot buyer's agreement as promised by the respondent. That despite various inquiries by the complainant qua execution of plot buyer's agreement and tentative date for handover the developed plot but the respondent failed to provide any information qua status of work of the aforesaid project and also kept delaying execution of plot buyer's agreement and later on started ignoring calls and personal meetings with the complainant. Accordingly, the complainant visited the site to see the work progress; however to the utter shock of the complainant it was found that the proposed project never got developed as per the proposed plan and

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the complainant also found that the said project never got any approval from the competent Authorities.

- vi. That despite various reminders and despite willingness of the complainant to make further payments, the respondent failed to execute plot buyer's agreement and other related documents and accordingly, the complainant had approached the respondent and its officers inquiring the status of execution of plot buyer's agreement and tentative date for delivery of possession but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery of said residential plot.
- vii. That the respondent has committed grave deficiency in services by delaying the execution of plot buyer's agreement and delivery of possession and false promises made at the time of sale of the said residential plot and regarding obtaining the required approvals from statutory authorities, which amounts to unfair trade practice, which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said residential plot by not delivering the said plot within the agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy said residential plot on the basis of its false and frivolous promises and representations about the obtaining statutory approvals the delivery timelines aforesaid project.

C. Relief sought by the complainant:

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

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- I. Direct the respondent to refund the entire paid-up amount i.e., Rs.25,00,000/- to the complainant along with interest @18% p.a. from the date of respective payments till its complete realization.
- II. Direct the respondent to pay the cost of litigation.

D. Reply by the respondent no.3:

5. The respondent no. 3 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 the date of handover of possession has never arrived:**
 - I. It is submitted that the complainant had requested the respondent seeking investment in undeveloped agricultural land in the year 2010 in the hope of making speculative gains on the approval of the zoning plans. That the present real estate market conditions are not favourable, the complainant has sought to file this vexatious complaint to extract huge amount of money from the respondent in the form of interest and compensation. That it is submitted herein the respondent has not agreed to provide service of any kind to the complainant unless the zonal plans were approved. The complainant has filed the present complaint with malafide intention of abusing the process of the Authority for wrongful gains in the form of interest at the cost of the respondent.
 - II. That the complainant has approached the respondent in the year 2010 to invest in undeveloped agricultural land in one of the

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futuristic projects of the respondent located in Sector 37-C and 37-D, Gurugram. The complainant fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere futuristic project have decided to make an investment in the said project of the respondent for speculative gains. That thereafter, the complainant has paid a booking amount of Rs.25,00,000/- through cheques dated 14.09.2010 and 21.09.2010 against booking of one plot admeasuring 300 sq. yds. in future potential project of the respondent.

- III. That further the complainant herein has resorted to filing a complaint solely on the basis of false claims and baseless accusations against the respondent while concealing its own defaults and laches for which they are solely liable.
- IV. That the said payments were not full and final payments and further payments inter alia towards government dues on account of other charges are payable at the time of allotment of plot and execution of plot buyer's agreement.
- V. 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 statutory authority which is within the knowledge of the complainant.
- VI. The claims for possession are superfluous and non-est in view of the fact that the complainant is actually not even entitled to claim possession of the plot as on date. It is submitted that it is only on default in offer/handover of possession that the complainant's right to claim possession/refund crystalizes.



- VII. The complainant has attempted to create a right in his favour by resorting to terminate transactions which have become hopelessly barred by time and after the period of limitation has lapsed it cannot be revived.
- VIII. That it is pertinent to mention herein that no date of possession was ever committed by the respondent since the project was a futuristic project which was highly reliant upon approval of zonal plans by the concerned authority and the complainant having complete knowledge of the same has willingly made speculative investments in the said project.
- IX. That it is evident that the complainant has approached the Authority by suppressing crucial facts with unclean hands which is evident from its own complaint. Therefore, the present complaint is liable to be rejected in limine based on this ground alone.
- iii. **Complainant is not genuine buyer:**
- a. That since the Act of 2016 does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 2019. 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 four walls of the term "Consumer". That further the complainant is mere investor who had invested in the project for commercial purposes.
- b. 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 the sole intention of the

complainant was to make an investment in a futuristic project of the respondent only to reap profits at a later stage. That further complainant has nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". The complainant has deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf, the Hon'ble Authority may strictly direct the complainant to adduce any documentary evidence in support of their averments.

- c. 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 complainant is plainly investor who has 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 the Hon'ble Authority with clean hands and only with malafide intention to harass the respondent in the most harm causing way possible.
- d. That the complainant has approached the respondent's office in 2010 and has communicated that the complainant is interested in a project which is "not ready to move" and expressed his interest in a futuristic project. It is submitted that the complainant was not interested in any of the ready to move

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in/near completion projects of the respondent. It is submitted that on the specific request of the complainant, the investment was accepted towards a futuristic project. Now the complainant is trying to shift the entire burden on the respondent as the real estate market is facing rough weather.

- e. That the complainant is 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

iv. **The complaint defies the stipulated period of limitation:**

1. That the complainant herein is not entitled to claim refund as claimed by the complainant in the complaint is clearly time barred. The complainant has himself not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainant along with several other reasons beyond the control of the respondent as cited by the respondent which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainant herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainant had any doubts about the project, it is only reasonable to express

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so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicion that the present complaint is only made with an intention to arm twist the respondent.

v. **That there is no default on the part of the respondent:**

- 1) That further the reasons for delay are solely attributable to the regulatory process for approval of layout plan which is within the purview of the department of Town and Country Planning. The complaint is liable to be rejected on the ground that the complainant had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of the Authority 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 the Authority and hence the complaint is liable to be dismissed on this ground as well.
- 2) That the complainant's primary prayer for handing over the possession of the said plot is entirely based on imaginary and concocted facts by the complainant and the contention that the respondent was obliged to hand over possession within any fixed time period from the date of booking is completely false, baseless and without any substantiation; whereas in reality the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking in September, 2010 was made by the complainant

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towards a *future potential project* of the respondent and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainant.

- 3) That further the respondent has applied for the mandatory registration of the project with the RERA Authority but however the same is still pending for approval on the part of the RERA Authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under RERA. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the RERA for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondent. This by any matter of fact be counted as a default on the part of the respondent.
- 4) There is no averment in the complaint which can establish that any so called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The 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 his own personal gain.



There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so called delay in handing over possession of the said plot. Hence the complaint is liable to be dismissed on this ground as well.

- 5) The respondent is owner of vast tracts of undeveloped land in the revenue estate of village Basai, Gadauli Kalan and falling within the boundaries of Sector 37C and 37D Gurugram also known as Ramprastha City, Gurugram.
 - 6) That even in the adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyers/allottees. That even in such harsh market conditions, the respondents have been continuing with the construction of the project and sooner will be able to complete the development of the project.
6. The present complaint has been filed by the complainant against M/s Ramprastha Estates Pvt. Ltd. as R1 but the receipt has been issued by M/s Ramprastha Developers Pvt. Ltd. as R2 and the reply has been filed by M/s Ramprastha Promoters and Developers Pvt. Ltd. as R3 only. The registered office address of all the respondents as mentioned in complaint is same. Further, the address mentioned by Sh. Tarun Arora, Authorized Representative of the R3 as mentioned in the affidavit dated 23.08.2022 is also same as mentioned in the complaint but he has not distinguished the role and responsibilities between R1, R2 and R3 and all the respondents

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are associated company having same address and hence all 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 submissions made by the parties as well as the written submissions of the complainant.

E. Jurisdiction of the authority:

8. 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

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

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

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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.

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.

9. 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."

10. 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 paid-up amount and interest on the same.

F. Findings on the objections raised by the respondent.

F.1 Objection regarding the complainant being investor.

11. The respondent has taken a stand that the complainant is the investor and not consumer. Therefore, he has not entitled to the protection of the Act and is 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.25,00,000/- to the promoter towards purchase of the 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;"

12. 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. 000600000010557 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

13. Another contention of the respondent is that the complainant defies the stipulated period. As there is no plot buyer's agreement is executed so the due date of possession is to calculated 3 years from the date of booking i.e., 14.09.2010. Thus, the due date of possession comes to 14.09.2013. Further, if the date of possession was to be construed in September 2013, the period of limitation has come to an end in the year September 2016. 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."

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

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the entire amount i.e., Rs.25,00,000/- to the complainant along with 18% interest from the date of respective payments till its complete realization

15. The complainant submits that vide cheques dated 14.09.2010 and 21.09.2010, he had paid an amount of Rs.25,00,000/- to the respondent/promoter and the same was confirmed by the respondent vide receipt dated 30.09.2010 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 various reminders and willingness of the complainant to make further payments neither any allotment letter was issued in respect of the aforesaid plot nor the respondent has executed any plot buyer's agreement and not even finalized anything regarding specification of 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 Indian 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 Indian Contract Act, 1872 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 existing or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any plot 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's 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 allottee 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 allottee.

20. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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 of 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. The complainant is seeking refund the amount paid by him at the prescribed rate of interest 18%. However, the allottee is entitled for refund of the amount paid by him 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%.

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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., 16.11.2023 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 his right for seeking refund under section 18(1)(b) of the Act, 2016.

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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.25,00,000/- made in the year 2010. So, the case falls under section 18(1)(b) of the Act of 2016.
27. In the instant matter, even after lapse of 13 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 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 14.09.2013.

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 within the specified date therein. Accordingly, the promoter is liable to the allottee, as he 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 him 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*.

H. 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 respondents/promoter are directed to refund the amount i.e., Rs.25,00,000/- 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 respondents 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: 16.11.2023