

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

Date of decision: 06.03.2024

NAME OF THE BUILDER		M/s Ramprastha Estates Private Limited	
PROJECT NAME		"Ramprastha City"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3284/2023	Hridey Vikram Bhatia V/s M/s Ramprastha Estates Private Limited	Shriya Takkar Advocate (Complainant) R. Gayatri and Navneet Kumar Advocates (Respondent)
2.	CR/3287/2023	Hridey Vikram Bhatia V/s M/s Ramprastha Estates Private Limited	Shriya Takkar Advocate (Complainant) R. Gayatri and Navneet Kumar Advocates (Respondent)

CORAM:

Ashok Sangwan

Member

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 Estates 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 valid upto 08.06.2016
Name of 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/3284/2023 Hridey Vikram Bhatia V/s M/s Ramprastha Estates Private Limited Date of Filing of complaint- 13.07.2023	Reply received on 28.11.2023	E-23 (page 50 of complaint)	Not executed Provisional allotment letter: 19.04.2019 (page 50 of complaint)	19.04.2022 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]	TSC: - Rs.17,50,000/- + EDC/IDC and other charges payable to government AP: - Rs.17,50,000/- (as per receipt dated 23.10.2010 on page 43 of complaint)	1.Execute a plot buyer's agreement with respect to the provisionally allotted plot. 2.Possession along with delayed possession charges. 3.Execution of conveyance deed. 4.Litigation expense.
2.	CR/3287/2023 Hridey Vikram Bhatia V/s M/s Ramprastha Estates Private Limited	Reply received on 28.11.2023	E-24 (page 50 of complaint)	Not executed Provisional allotment letter: 19.04.2019 (page 50 of complaint)	19.04.2022 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor]	TSC: - Rs.17,50,000/- + EDC/IDC and other charges payable to	1.Execute a plot buyer's agreement with respect to the provisionally

	Date of Filing of complaint- 13.07.2023			<i>D'Lima and Ors. (12.03.2018 - SC); MANU/SC /0253/2018]</i>	government AP: - Rs.17,50,000/- (as per receipt dated 23.10.2010 on page 44 of complaint)	allotted plot. 2.Possession along with delayed possession charges. 3.Execution of conveyance deed. 4.Litigation expenses.
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviation Full form TSC- Total Sale consideration AP- Amount paid by the allottee(s)</p>						

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 and other.
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/3284/2023 titled as Hridey Vikram Bhatia V/s M/s Ramprastha Estates 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/3284/2023 titled as Hridey Vikram Bhatia V/s M/s Ramprastha Estates Private Limited

S. N.	Particulars	Details
1.	Name of the project	"Ramprastha City", Sectors 92, 93 & 95, Gurugram, Haryana
2.	Project area	128.594 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.	Date of environment clearances	10.05.2019 [As per information obtained by planning branch]
7.	RERA Registered/ not registered	Registered vide no. 13 of 2020 dated 05.06.2020
8.	RERA registration valid up to	31.12.2024
9.	Plot no.	E-23 (page 50 of complaint)
10.	Unit area admeasuring	500 sq. yds. (as per payment receipt on page 43 of complaint)

11.	Provisional Allotment letter	19.04.2019 (page 50 of complaint)
13.	Date of execution of plot buyer's agreement	Not executed
14.	Due date of possession	19.04.2022 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
15.	Total sale consideration	Rs.17,50,000/- + EDC/IDC and other charges payable to government. (as per allotment letter dated 19.04.2019)
16.	Amount paid by the complainant	Rs.17,50,000/- (as per payment receipt on page 43 of complaint)
17.	Occupation certificate /Completion certificate	Not received
18.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That believing and relying upon the false assurances of the respondent, the complainant paid an amount of Rs.35,00,000/- towards allotment of a plot admeasuring 1000 sq. yards in the residential plotted colony of the respondent named "Ramprastha City" at Sector 92, 93 & 95, Gurugram.
 - II. That the complainant after three years of making the entire payment of total cost of the plot received a letter dated 15.11.2009 from the respondent stating that it had already started the construction work of the said project and requested the complainant to update his records by furnishing complete details and documents.



- III. That in response to the letter dated 15.11.2009, the complainant vide letter dated 24.11.2009 submitted all the details and documents as required by the respondent for the records and needful doing of the respondent. It is pertinent to mention herein that the complainant was assured at the time of payment in 2006 that the possession of the plot would be handed over by the respondent within a period of three years and on the basis of said assurance the complainant paid a huge sum of money to the respondent, however the respondent even failed to allot any plot to the complainant despite a lapse of almost 3 years.
- IV. That after more than 3 years from the receipt of Rs.35,00,000/- as full payment towards the plot from the complainant, the respondent obtained a license bearing no. 44 of 2010 dated 09.09.2010 from the DTCP, Haryana in favour of the respondent for development of a residential plotted colony in the name and style of 'Ramprastha City', spread over 128.594 acres in Sector 92, 93 & 95 Gurgaon.
- V. That the complainant herein had made payment of Rs.35,00,000/- for allotment of a single plot admeasuring 1000 sq. yards. However, after a lapse of more than 4 years from the date of payment, the respondent informed him that it did not have a single plot admeasuring 1000 sq. yards and could instead allot two separate plots admeasuring 500 sq. yards each. That the complainant having no other option acceded to the request of the respondent. In view of the above, the payment of Rs.35,00,000/- made by the complainant towards allotment of one plot was transferred by the respondent to two individual plots admeasuring 500 sq. yards each and two separate receipts dated 23.10.2010 bearing receipt no. 1892 and 1890 for Rs.17,50,000/- each were issued by the respondent.



- VI. That despite a lapse of more than 6 years from the date of payment and several requests being made on behalf of the complainant, the respondent company failed to allot any plots to him. Therefore, the complainant visited the office of the respondent time and again requesting them to initiate the process of allotment, but to no avail. Thereafter, the complainant issued letters dated 08.10.2012, 27.05.2014 & 23.07.2016 to the respondent requesting to allot plot numbers and execute plot buyers' agreement for the same but the respondent failed to do so.
- VII. That after constant follow ups, multiple requests, reminders and several meetings and only after a lapse of more than 13 years, the respondent issued an allotment letter dated 19.04.2019, provisionally allotting plot bearing no. E-23 in the plotted colony 'Ramprastha City'. Further, the respondent also informed the complainant that the above stated plot i.e. E-23 will be finally allotted to him only after the receipt of RERA registration.
- VIII. That the respondent received the RERA registration for its project 'Ramprastha City' on 05.06.2020 vide registration no. 13 of 2020. Further, it is one of the condition of the RERA registration that the respondent shall enter into an agreement for sale with the allottees as prescribed in the Haryana Real Estate (Regulation and Development) Rules, 2017.
- IX. That since the RERA registration had been granted to the respondent, the complainant herein on multiple occasions requested the respondent to finally allot the plot and also requested it to execute the agreement for sale.



- X. That the allotment letter dated 19.04.2019 was final and binding upon the parties. However, the respondent till date has failed to allot the reserved plot admeasuring 500 sq. yards despite categoric assurances in the allotment letter dated 19.04.2019.
- XI. That since the respondent failed to finally allot the plot bearing no. E-23 to the complainant and also failed to execute an agreement for sale with respect to the same, the complainant herein issued a letter dated 12.03.2022 to the respondent requesting it to execute the plot buyer agreement/agreement for sale in respect of the said plot within 7 days from the receipt of the letter and further also requested the respondent to handover the physical possession of the said plot to the complainant at the earliest. However, the same has not been handed over to the complainant till date. It is submitted that the respondent despite accepting the entire sale consideration 17 years ago is yet to execute plot buyer's agreement and give possession of the plot to the complainant.
- XII. That by collecting the entire sales consideration from the complainant without entering to an agreement for sale/plot buyer's agreement, the respondent is in complete violation of Section 13(1) of the RERA Act, 2016.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
- Direct the respondent to execute and get registered the plot buyer's agreement with the complainant with respect to the plot no. E-23 (500 sq. yards) in the plotted colony "Ramprastha City".
 - Direct the respondent to handover physical possession of the plot and to execute and get registered the conveyance deed with the complainant.

- iii. Direct the respondent to pay the delay possession charges on the paid-up amount till actual handing over of the possession.
 - iv. Direct the respondent to pay litigation expenses.
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 project of the respondent was delayed due to revision of zoning plans by the state authorities, incorrect depiction of village boundary lines, deviation in the road, passing of HT lines over the project, delay on part of government authorities in granting necessary approvals etc. and the respondent has no control over the same.
 - ii. That the complainant is not an allottee and hence the proceedings are merely in the nature of recovery which is not maintainable before this Authority. That even if it is assumed that such a claim in the nature of money is maintainable, the claim is hopelessly barred by limitation filed after the expiry of 3 years from the date of payment.
 - iii. That the objective of the RERA Act is not only to safeguard the interests of the allottees but also to ensure the healthy promotion of the real estate sector and to protect the interests of the several stake holders involved in such sector. Therefore, in the abovesaid the present complaint is not maintainable in its present form and ought to be dismissed with exemplary costs upon the complainant.
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. Objection regarding maintainability of complaint.

17. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainant has made the payment back in 2010. 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.
18. 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:

19. 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.
20. Moreover, it is observed that vide letter dated 14.09.2012 and 28.09.2012, the respondent/promoter has informed the complainant that it has initiated the allotment process for the residential plots located in "Ramprastha City", Sector 92, 93 & 95, Gurgaon and will allot the same after following due procedure, whereas the same was provisionally allotted to the complainant only on 19.04.2019. Further, vide letter dated 19.04.2019, the respondent stated that it will allot the plot bearing no. E-23 in favour of the complainant only after receipt of RERA registration by the company. However, despite receipt of full consideration amount against the booked plot back in 2010 except stamp duty and other charges payable to the government and even after receipt of RERA registration back in 2020, the respondent-promoter has failed to execute an agreement for sale with respect to the same and has failed to get the plot registered in name of the complainant 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.

21. 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'.

22. 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 Direct the respondent to execute and get registered the plot buyer's agreement with the complainant with respect to the plot no. E-23 (500 sq. yards) in the plotted colony "Ramprastha City".

G. II Direct the respondent to handover physical possession of the plot and to execute and get registered the conveyance deed with the complainant.

23. All the above-mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

24. The complainant has booked a plot admeasuring 500 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.17,50,000/- vide receipt dated 23.10.2010. The respondent after receipt of full consideration except EDC/IDC, development and other charges payable to the government back in 2010, provisionally allotted a plot bearing no.



E-23 in favour of the complainant vide letter dated 19.04.2019. Further, vide letter dated 19.04.2019, the respondent stated that it will allot the said plot in favour of the complainant only after receipt of RERA registration by the company. However, despite receipt of full consideration amount against the booked plot back in 2010 except stamp duty and other charges payable to the government and even after receipt of RERA registration back in 2020, the respondent-promoter has failed to enter into a written agreement for sale with respect to the same and has failed to get the plot registered in name of the complainant till date. Thus, in view of the agreed terms of the letter dated 19.04.2019 read with Section 11(4)(a) and Section 13 of the Act of 2016, the respondent-promoter is directed to enter into a registered agreement for sale with the complainant w.r.t. the plot in question within a period of one month and handover possession of the allotted plot admeasuring 500 sq. yards to him in the said project after obtaining CC/part CC from the competent authority.

25. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

26. 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. The respondent/promoter is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. Thus, the respondent is directed to execute the conveyance deed in favour of complainant within three months from the date of issuance of completion certificate/part completion certificate upon payment of the outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per section 17 of the Act failing which the complainant may approach the adjudicating officer for execution of order.

G. III Direct the respondent to pay interest on the amount paid as per Act.

27. 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."

28. **Due date of possession:** As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor***

d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1 and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***

"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. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

29. In the instant case, the promoter has provisionally allotted a plot in its project vide provisional allotment letter dated 19.04.2019. In view of the above-mentioned reasoning, the date of allotment 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 19.04.2022.
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., 06.03.2024 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 him 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. The possession of the subject plot was to be delivered by 19.04.2022. However, despite receipt of full consideration amount against the booked plot back in 2010 except stamp duty and other charges payable to the government, the respondent-promoter has failed to enter into a written agreement for sale with respect to the same and has failed to handover possession of the subject plot to the complainant till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities 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. 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. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the completion certificate is yet not obtained. The respondent shall offer the possession of the plot in question to the complainant after obtaining completion certificate and so, it can be said that the complainant shall come to know about the completion certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given two months time



from the date of offer of possession. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 19.04.2022 till the expiry of 2 months from the date of offer of possession or actual handing over of possession and whichever is earlier.

37. 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 the prescribed rate of interest @10.85% p.a. w.e.f. 19.04.2022 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.

G.IV Litigation expenses.

38. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.




H. Directions of the authority

39. 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 enter into a registered agreement for sale with the complainant w.r.t. the plot in question 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., 19.04.2022 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 arrears of such interest accrued from 19.04.2022 till the date of order by the authority shall be paid by the respondent/promoter to the complainant 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.
- iv. The respondent/promoter is directed to handover possession of the plot in question and execute conveyance deed in favour of the complainant on payment of stamp duty and registration charges within three months after obtaining completion/part completion certificate from the competent authority.

40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
41. Complaints stand disposed of.
42. File be consigned to registry.

Dated: 06.03.2024


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



HARERA
GURUGRAM