

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

Complaint no. : 6593 of 2022
Date of complaint : 17.10.2022
Date of decision : 15.05.2024

1. Rajiv Kumar Bindal,
2. Suman Bindal,
**Both R/o: -H.No. 65, Sector-15,
Panchkula-134113.**

Complainants

Versus

1. M/s Ramprastha Developers Pvt. Ltd.
2. M/s Ramprastha Promoters and Developers Pvt. Ltd.
3. M/s Ramprastha Estates Pvt. Ltd.
**All Having Regd. office at: - Plot No. 114, Sector-44,
Gurugram-122002.**

Respondents

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Garvit Gupta (Advocate)
Navneet Kumar (Advocate)

Complainants
Respondents

HARERA
ORDER

1. The present complaint has been filed by the complainants/allottees 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 under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

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

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.	Not provided
10.	Unit area admeasuring	300 sq. yds. (as per preliminary allotment letter on page 26 of complaint)
11.	Preliminary Allotment letter	22.02.2012 (page 26 of complaint)
12.	Date of execution of plot buyer's agreement	Not executed
13.	Due date of possession	22.02.2015 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]
14.	Total sale consideration	Rs.78,00,000/- + registration, development charges, service tax or any other charges payable to government (as per preliminary allotment letter on page 26 of complaint)

15.	Amount paid by the complainants	Rs.78,00,000/- (as per payment receipt dated 28.06.2011 and acknowledgement made by the respondents on page 24-25 of complaint)
16.	Occupation certificate /Completion certificate	Not received
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

I. That the complainants induced by the assurances and representations made by the respondent no.1 and 2, made a payment of Rs.45,00,000/- towards booking of a residential plot in their project. It is pertinent to mention that earlier, the complainants had also made a payment of Rs.33,00,000/- in cash on 10.06.2011 to the respondents no.1 and 2 towards the statutory charges and the same was duly acknowledged by the CEO of the respondents namely Sh. Nikhil Jain.

II. That respondent no.1 on the basis of the application made by the complainants and the complete payment made by the complainants, issued a letter dated 22.02.2012 for preliminary allotment for plot measuring 300 sq. yards in its project named 'Ramprastha City', Sectors 92,93 and 95, Gurugram. Vide the said letter it was intimated to the complainants that the allotment has been made against the consideration of the property. It is very important to mention herein that along with the said letter, respondent no.1 also shared a price list with the complainants wherein it had separately charged preferred location charges. The amount mentioned in the price list was already paid by the complainants to the respondents no.1 and 2 at their instance

in the form of cash as already stated above. Respondent no.2 after ten months of the issuance of the said letter issued another letter dated 05.12.2012 intimating that the allotment process of the residential plots were initiated by it and requested the complainants to visit its corporate office.

- III. That when the complainants visited the corporate office of the respondents no.1 and 2, the complainants were surprised and anguished with the response of respondents no.1 and 2 who informed the complainants that the allotment of the unit and execution of a plot buyer's agreement would take some more time. It is pertinent to mention herein that the since, the complainants had made complete payment towards the purchase of the residential plot, they had no other option but to believe the representations being made by the respondents no.1 and 2. It was assured by the representatives of the respondents no.1 and 2 that the physical possession of the plot against the booking made by the complainants would be handed over in a span of 4-5 years from the date of the complainants making the first payment.
- IV. That despite specific assurances of the respondents no.1 and 2 that they would soon allot a plot number to the complainants and would execute an agreement, they miserably failed to do so. The respondents no.1 and 2 failed to perform the most fundamental obligation of the allotment which was to actually allot a plot to the complainants against the consideration received by them, which in the present case has been delayed for an extremely long period of time. The respondents no.1 and 2 kept on misleading the complainants by giving incorrect information and assurances that they would hand over the possession to the complainants very soon.

- V. That vide email dated 21.02.2018, complainant no.1 again requested the respondents no.1 and 2 through their CEO to allot and handover the physical possession of the plot to the complainants. The respondents no.1 and 2 who were in blatant violation of law suddenly stopped responding to any emails or calls made by the complainants from 2018 to 2021. The respondents no.1 and 2 deliberately, mischievously, fraudulently and with malafide motives cheated the complainants.
- VI. That the complainants on 19.02.2021 came across a public notice in the newspaper regarding the decision of DTCP, Haryana to grant permission to change of developer from respondent no.3. i.e an associate company of the respondents no.1 and 2 to Ashiana Housing Ltd with respect to the land which was situated in the same sector wherein the project in question was being developed and the complainants sought clarity from respondent no.3 about the same vide their letter dated 26.02.2021. Respondent no.3 vide its letter dated 05.03.2021 clarified to the complainants that the public notice doesn't pertain to the project in question as Ramprastha Group has another license for development of the project in question i.e license no. 44 of 2010 in Sector 92 and 95, Gurugram. It was further informed that the license no. 44/2010 was still with the Ramprastha group.
- VII. That thereafter yet again the complainants kept on requesting the respondents no.1 and 2 to allot a plot, execute the plot buyer's agreement and hand over the possession of the same, but the respondents no.1 and 2 kept on dilly-dallying the matter. The complainants have been running from pillar to post and has been mentally and financially harassed by the conduct of the respondents.

- VIII. That the project in question has been registered with this Authority vide registration number 13 of 2020. It is very important to mention herein that while going through the documents submitted for the project in question to this Authority, the complainants got to know that the project has not been registered in the name of the respondents no.1 and 2 but in the name of respondent no.3. A bare perusal of the license no. 44/2010 granted by the concerned authorities with respect to the land in question would reveal that the same has not been granted to the respondents no.1 and 2 either. Even as per the documents submitted for the purpose of obtaining registration certificate and uploaded on the HARERA website, it becomes very clear that the zoning plans, layout plans and service plans were issued only to respondent no.3 and not respondents no.1 and 2. Even the demarcation plan of the project has been issued to respondent no.3 and not respondents no.1 and 2.
- IX. Furthermore, it is the director of respondent no.3 who has submitted the mandatory affidavit cum declaration verified on 09.09.2019 and the respondents are nowhere in the picture. Even as per the said declaration, the promoter has shown the period for completion of the project as December, 2020. While going through the documents, the complainants were further surprised to know that even the development/collaboration agreement which has supposedly been submitted to the revenue department is between the landowners and respondent no.3. The complainants are victims of serious misrepresentation deliberately committed by the respondents in collusion with each other. The complainants have a serious apprehension that the amount paid by the complainants have been siphoned off by the respondents and hence, it is for this very reason that

they are now just adopting delaying tactics instead of allotting a plot in the project to the complainants.

- X. That the respondents have committed various acts of omission and commission by making incorrect and false statements at the time of booking. There is an inordinate delay of 11 years calculated upto June, 2022 and till date the allotment of the plot has not been done. Agreement not executed nor has possession of any plot been handed over by the respondents to the complainants. The failure of the respondents has resulted in serious consequences being borne by the complainants.
- XI. That the respondents are enjoying the valuable amount of consideration paid by the complainants out of their hard-earned money and the complainants realizing the same, demanded delayed possession charges from the respondent. But a week ago, the respondents have in complete defiance of their obligations refused to allot the plot and hand over the possession to the complainants along with delayed possession charges leaving them with no other option but to file the present complaint. The respondents have also offered another plot in another sector of the city and the complainants have made it clear to the respondents that they are only interested in the allotment in the particular sectors (Sector 92 and 95, Gurugram) in which the plot was booked by them. Since respondents miserably failed in their obligations, hence the complainants are entitled to interest at prescribed rate as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 beside compensation for huge mental torture and misrepresentation for which the complainants reserve their right to approach appropriate forum.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s)
 - i. Direct the respondents to allot a plot admeasuring 300 sq. yards as per the terms of the booking and execute a plot buyer's agreement with the complainants.
 - ii. Direct the respondents to handover the possession of the plot to the complainants and to execute a conveyance deed after development and offering possession to the complainants.
 - iii. Direct the respondents to pay delay possession charges from the date of issuance of preliminary allotment letter till the date of handing over of possession.
5. 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 respondents.

6. The respondents have contested the complaint on the following grounds:
 - i. That the complainants had approached the respondents in the year 2011 showing an interest to participate in one of the future potential projects of the respondents. It is pertinent to mention that the above-named future potential project was indeterminate at the point of time when the money was paid by the complainants merely to ensure that they are given priority to participate in any project that gets the approval of the competent authority. It is submitted that the complainants had the option at all times to either claim refund of their money or let their money remain with the respondents in anticipation of future approvals which is subject to government action. Further, the complainants had the option at all times to recall his money even if the approval had come through, in the event,

they were not willing to participate in such projects. Since the complainants, always had such option but voluntarily opted to let their money remain with the respondents, hence they cannot be allowed to claim interest which has no legal or contractual basis.

- ii. That no date of possession has ever been mutually agreed between the parties. That in absence of any document in the nature of a builder buyer agreement, which contains several terms and conditions including the date of possession and the consequences of default, no date of possession can be said to have been mutually agreed between the parties.
 - iii. That the respondents had no certain schedule for the handover or possession since there are various hurdles in a futuristic project. 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.
 - iv. That the complainants are not allottee and hence the proceedings are merely in the nature of recovery which are not maintainable before this forum. 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. Therefore, in the abovesaid premises, the present complaint is not maintainable in its present form and ought to be dismissed with exemplary costs upon the complainants.
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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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.

11. 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 respondents

F. I Objection regarding maintainability of complaint.

12. The counsel for the respondents has raised an objection that the complaint is barred by limitation as the same has been filed after the expiry of 3 years from the date of payment. Hence, the complaint is not maintainable on the above-mentioned ground.
13. 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:

14. 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.

15. Moreover, it is observed that vide preliminary allotment letter dated 22.02.2012, the respondents have allotted a plot having size of 300 sq. yards to the complainants in its project named "Ramprastha City" at Sector 92, 93 and 95, Gurgaon after receiving consideration amount against the said property except registration, development charges, service tax or any other charges payable to government. Further, vide letter dated 05.12.2012, the respondents informed the complainants that the allotment process for the residential plots in "Ramprastha City", Sector 92, 93 & 95, Gurgaon has been initiated and accordingly requested the complainants to bring requisite documents for the allotment procedure. However, despite receipt of full consideration amount from the complainants back in 2011 against the booked plot except registration, development charges, service tax or any other charges payable to government, the respondents-promoter have not even allotted a specific plot to the complainants and also no effort has been made by it to get the plot registered in their name till date. As the respondents have failed to handover the possession of the allotted plot to the complainants 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.

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

F.II. Objections regarding the complainants being investor.

17. The respondents have taken a stand that the complainants are investor and not consumer and therefore, they is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents 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 respondents are 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 preliminary allotment letter issued by the promoter, it is revealed that the complainants are buyer and have paid entire consideration to the promoter except registration and other govt. charges 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 preliminary allotment letter, it is crystal clear that

the complainants are allottees as the promoter has agreed to allot a plot admeasuring 300 sq. yards to the complainants. 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 allottees being investor is not entitled to protection of this Act also stands rejected.

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

19. The respondents have 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 respondents. 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 respondents cannot take benefit of its own wrong and the objection of the respondents that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainants.

- G. I Direct the respondents to allot a plot admeasuring 300 sq. yards as per the terms of the booking and execute a plot buyer's agreement with the complainants.**

G.II Direct the respondents to handover the possession of the plot to the complainants and to execute a conveyance deed after development and offering possession to the complainants.

20. The above-mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
21. The complainants vide preliminary allotment letter dated 22.02.2012, were allotted a plot admeasuring 300 sq. yards in project of the respondents named "Ramprastha City" located at Sector 92, 93 and Sector 95, Gurugram after receiving consideration amount against the said plot except registration, development charges, service tax or any other charges payable to government. Thereafter, vide letter dated 05.12.2012, the respondents informed the complainants that the allotment process for the residential plots in "Ramprastha City", Sector 92, 93 & 95, Gurgaon has been initiated and accordingly requested the complainants to bring requisite documents for allotment procedure in the said project. However, despite receipt of full consideration amount from the complainants back in 2011 against the booked plot except registration, development charges, service tax or any other charges payable to government, the respondents-promoter have not even allotted a specific plot to the complainants and also failed to enter into a written agreement for sale with respect to the same. Thus, in view of the agreed terms of the letter dated 22.02.2012 read with Section 11(4)(a) and Section 13 of the Act of 2016, the respondents-promoter are directed to allot a specific plot number admeasuring 300 sq. yards to the complainants and also to enter into a registered agreement for sale with the complainants w.r.t to the same within a period of one month.
22. Further, the complainants are seeking relief w.r.t handing over of possession of plot as well as execution of conveyance deed in their favour

after development of the project. Section 17 (1) of the Act obligates the promoter to handover the physical possession of the plot and to get the conveyance deed executed in favour of the allottee 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."

23. However, in the instant case, 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 respondents/promoter are under an obligation as per section 17 of Act to handover possession of the plot and to get the conveyance deed executed in favour of the complainants. Thus, in view of the above, the respondents/promoter are directed to handover possession of the allotted plot admeasuring 300 sq. yards to the complainants in the said project after obtaining CC/part CC from the competent authority and to execute the conveyance deed in favour of complainants within a period of 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 complainants as per norms of the state

government as per section 17 of the Act failing which the complainants may approach the adjudicating officer for execution of order.

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

24. In the present complaint, the complainants intend to continue with the project and are 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."

25. **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."

26. In the instant case, the promoter has agreed to allot a plot in its project vide preliminary allotment letter dated 22.02.2012, after receipt of consideration from the complainants. In view of the above-mentioned reasoning, the date of issuance of the preliminary allotment letter 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 22.02.2015.

27. **Payment of delay possession charges at prescribed rate of interest:** The complainants are 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.

28. 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.

29. 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., 15.05.2024

is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

30. 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;"*

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondents/promoter which is the same as is being granted to them in case of delayed possession charges.

32. 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 22.02.2015. However, despite receipt of full consideration amount against the booked plot back in 2011 except registration, development charges, service tax or any other charges payable to government, the respondents-promoter have not even allotted a specific plot number to the complainants and also have failed to handover possession of the plot to the complainants till date of ✓

this order. Accordingly, it is the failure of the respondents/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 respondents to offer of possession of the allotted plot to the complainants. 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.

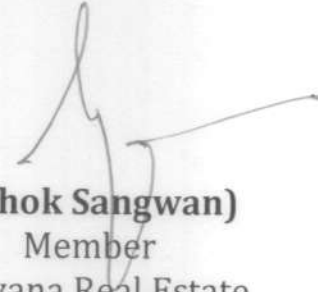
33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at the prescribed rate of interest @10.85% p.a. w.e.f. 22.02.2015 till actual 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

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):
- The respondents/promoter are directed to allot a specific plot number to the complainants admeasuring 300 sq. yards as agreed between the parties vide preliminary allotment letter dated 22.02.2012 and enter into a registered agreement for sale with the complainants w.r.t the same within a period of one month.

- ii. The respondent/promoter is directed to pay interest to the complainants 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., 22.02.2015 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 arrears of such interest accrued from 22.02.2015 till the date of order by the authority shall be paid by the respondents/promoter to the complainants 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 respondents/promoter are directed to handover possession of the plot and execute conveyance deed in favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining completion/part completion certificate from the competent authority.
35. Complaints stand disposed of.
36. File be consigned to registry.

Dated: 15.05.2024



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