



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	278 of 2021
Date of filing:	04.03.2021
First date of hearing:	27.04.2021
Date of decision:	26.02.2024

Dr. Aman Gupta
S/o Sh. Satpal Gupta
R/o House No. 330, Sector-8,
Panchkula, Haryana

.....COMPLAINANT No. 1

Dr. Megha Garg
W/o Dr. Aman Gupta
R/o House No. 330, Sector-8,
Panchkula, Haryana

.....COMPLAINANT No. 2

Versus

Haryana Shehri Vikas Pradhikaran formerly known as
Haryana Urban Development Authority,
HUDA Office Complex,
Sector 6, Panchkula through its Estate Officer

.....RESPONDENT No. 1

Administrator Estate Office,
Haryana Shehri Vikas Pradhikaran, formerly known as
Haryana Urban Development Authority,
HUDA Office Complex,
Sector 6, Panchkula

.....RESPONDENT No. 2

**CORAM: Nadim Akhtar
Chander Shekhar**

**Member
Member**

Present: - Ms. Rupali Verma Advocate, learned counsel for the complainants through VC.

Mr. Arvind Seth Advocate, learned counsel for the respondents through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 04.03.2021 by the complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short RERA Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made there under, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name and location of the project	Haryana Shehri Vikas Pradhikaran, Panchkula
2.	RERA registered/not registered	Un-registered
3.	Nature of project	Commercial
4.	E-Auction scheduled on	03.10.2016



5.	Unit details	Clinic Site No. 6, Sector 15, Urban Estate, Panchkula.
6.	Unit area	300 sq. mtrs
7.	Dimensions of the unit	20.00 X 15.00
8.	Allotment Letter	25.11.2016
9.	Date of Builder Buyer Agreement	Not executed
10.	Deemed date of possession	25.11.2018 Clause 21 of the brochure containing detailed terms and condition for auction of commercial sites in Estate Office HUDA, Panchkula reads as " <i>the construction of the building shall have to be completed in all respects within two years of the date of issue of allotment letter of the site</i> " Note: 2 years from date of allotment (25.11.2016) comes out to be 25.11.2018
11.	Total sale consideration	₹2,33,12,000/-
12.	Possession certificate without zoning plan given by respondent and actual possession taken on	29.12.2016
13.	Date of approval of building plan	08.05.2018
14.	Occupation certificate received on	04.11.2019



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

- i. That Haryana Shahri Vikas Pradhikaran, HSVP/HUDA offered certain commercial sites in an e-auction held on 03.10.2016. The complainants being interested to participate in the e-auction to bid for a clinic site in Sector 15, Panchkula, downloaded the brochure available on the official website of the respondents and a copy of the same is annexed as "Annexure C-3".
- ii. That the e-brochure provided for payment terms and as per condition No. 13 and 16 of the brochure. The successful/ highest bidder was required to pay an amount equivalent to 10% of the quoted bid amount on or before 05.00 P.M. 04.10.2016 and he was entitled to deposit another 15% of the quoted bid amount within 30 days of the date of regular date of allotment. Further, the successful bidder for a clinic site was entitled to pay the remaining 75% of the bid amount in lump-sum within 60 days from the date of issuance of allotment letter without any interest or in 08 equal half yearly instalments with 12% interest. That the complainants participated in the e-auction process scheduled on 03.10.2016 and being the highest bidder for Clinic Site No. 6, Sector 15, Panchkula were declared successful. The complainants gave the highest bid for an amount of ₹2,33,12,000/- .
- iii. That on 25.11.2016, respondents issued an allotment letter in favour of the complainants. As per condition No. 4 of the allotment letter, the



complainants were advised to pay the remaining amount of Rs. 1,74,84,000/- in lump-sum without interest within 60 days from the date of issuance of allotment letter or in 8 half yearly instalments with 9% interest p.a. A true copy of the allotment letter dated 25.11.2016 is annexed herewith as "Annexure C-4".

- iv. That therefore, date of allotment letter would provide the timelines provided for completion of construction works and payment terms and penal consequences in case the same are not adhered to. As per condition No. 5 of the allotment letter reads as "the possession of the site is hereby offered with this allotment". The said condition has to be read in conjunction with Condition No. 15 of the allotment letter which reads as under: -

"15. You will have to complete the construction within two years of the date of offer of possession after getting the plans of the proposed building approved from the competent authority in accordance with the regulations governing the erection of buildings. The time limit is extendable by the Estate Officer as per policy of HUDA, otherwise this plot is liable to be resumed and the whole or part of the money paid, if any, in respect of its forfeited in accordance with the provision of the said Act. You shall not erect any building or make any alteration addition without prior permission of the Estate Officer. No fragmentation of any land or building shall be permitted. Residential or Commercial use will not be allowed at any stage."

- v. That condition No. 5 & 15 of the allotment letter would come into motion provided the respondents had fulfilled the pre-conditions laid down by the Town & Country Planning Wing of HSVP as contained in the instructions



dated 13.11.2007 and 21.04.2009 at Annexures C-1 and C-2, which laid down a mandatory condition of zoning plan to be provided at the time of offer of possession and before a site could be put to auction. The said instructions were issued by the Chief Administrator, HSVP, Panchkula and are binding on all Estate Officers and Administrators, HSVP. That the said instructions clearly provide that possession of the plot cannot be given unless a Zoning Plan duly incorporated in the possession letter besides the architectural designs is provided to the prospective allottee. Further, that no plot other than residential plot should be put to auction unless its zoning has been approved and properly displayed at the time of auction otherwise the concerned Estate Office personally shall be held responsible for the lapse.

- vi. That the complainants were allotted a site in an auction process and later, the respondents could not approve building plans of the site in question for the reason that the respondents claimed that they do not have Zoning Plan for the site. However, the respondents continued to charge interest without being in position to approve building plans of the site. The complainants paid the major part of the sale consideration in instalments along with interest @ 12%, but at the same time they could not utilize or develop the site for pending clarification as regards zoning plan and approval of building plans.



- vii. That in this factual background and understanding of the terms and conditions of the e-brochure and allotment letter read in conjunction with instructions dated 13.11.2007 and 21.04.2009, the complainants would submit that possession of the site was offered to the complainants on 29.12.2016 and perusal of the possession certificate would show that the respondents did not provide any zoning plan of the site. A true copy of the possession certificate dated 29.12.2016 is annexed as "Annexure C-5".
- viii. That complainants continued to pay the remaining 75% of the auction price strictly as per the schedule drawn in the allotment letter. Complainants, immediately after taking possession of the site on 29.12.2016 initiated the steps for preparation and approval of building plans so that they could complete construction over the site within the stipulated period as mentioned in the allotment letter and the e-brochure.
- ix. That the officials of the respondents started harassing the complainants and did not give any clear response to repeated requests for providing details of the applicable zoning plan on the site in question. The Architect engaged by the complainants required clear zoning of the site to proceed with preparation of the building plans.
- x. That the complainants were informed by the concerned official that zoning plan was not available for site No. 6, Sector 15, Panchkula and on this shocking revelation, the complainants were advised to write to the Estate Officer for preparing of zoning plan. In this regard, the complainants wrote



letters dated 17.11.2017, 18.12.2017, 21.12.2017, 29.12.2017, 29.12.2017, 29.12.2017 and 03.01.2018 requesting the respondents for preparation/providing a zoning plan and till such time zoning plan is not available, respondent should not charge interest on the balance amount of the sale consideration. True copies of the letters/representation dated 17.11.2017, 18.12.2017, 21.12.2017, 29.12.2017, 29.12.2017; 29.12.2017 and 03.01.2018 are annexed as "Annexure C-8 to Annexure C-14".

- xi. That after more than 15 months from the date of auction and more than one year from date of the allotment and alleged handing over a possession, on 25.01.2018 the office of Senior Town Planner, Panchkula wrote to the office of District Town Planner, Panchkula in reference to some communication dated 04.01.2018 written by the latter that building plans can be approved on the basis of zoning plan dated 19.07.2001 and no reason is available as to why revision in the zoning plan is required. The Senior Town Planner, Panchkula circle further advised District Town Planner that it is the width of the plot which is at variance and there is no change in the setbacks and therefore, building plans can be approved as per the earlier zoning plan. A true copy of the communication dated 25.01.2018 is annexed as "Annexure C-15".
- xii. However, from the date of allotment letter, i.e., 25.11.2016 till 07.05.2018, the reason for non approval of building plans was not put to the complainants but at the same time, the complainants were forced to pay 3



instalments scheduled on dated 25.05.2017, 25.11.2017 and 25.05.2018 alongwith interest. Sanction letter of approval of Building Plans dated 08.05.2018 was also submitted for approval on 15.09.2017 is annexed herewith as "Annexure C-16" and in this regard relevant page of the status of the various approvals as downloaded from the official website of the respondents wherein, the fresh building plan was rejected is annexed as "Annexure C -17".

- xiii. That further, after promulgation of Haryana Building Code 2017, FAR increased but the respondents did not pass on the benefits of the increased FAR to clinic sites and the complainants had to make repeated representations leading to revision of the Building Plans. A copy of the sanction letter dated 19.11.2018 providing for revised Building Plan due to increase in FAR is annexed herewith as "Annexure C -18".
- xiv. That the amount of interest charged alongwith first three instalments could not have been charged towards interest for the reason that possession without zoning plan is meaningless, especially, when the time is of the essence and in case of delay of completion of construction beyond the period provided in the allotment letter reckoned from the date of possession carries penal consequences for the allottee. In case of delay in completion of construction, the allottee/complainants were supposed to pay extension fee and other charges for validation of building plans etc. The amount that has been charged in excess from the complainants is



₹29,03,194/-. A true copy of the calculation sheet duly certified by a Chartered Accountant alongwith the details of the actual dates and payments made to the respondents are annexed as "Annexure C -19" and "Annexure C -20" respectively.

- xv. That the building plans for the site in question could be sanctioned only on 08.05.2018 for the reasons solely attributable to the respondents, the complainants were levied extension fee considering the date of allotment as 25.11.2016. The building plans were approved on 08.05.2018 and occupation certificate was issued on 04.11.2019. That for all intents and purposes, the date of completion of construction should have been construed from the date of approval of building plans that is, 08.05.2018 but without acknowledging their mistake, on 03.07.2019 the respondents levied extension fee of Rs. 22500/- upon the complainants, which is illegal and out of which an amount of Rs. 5500/- was refunded by the respondents on 19.08.2020. The complainants made representations for the wrongful levying of extension fee and wrote representations dated 25.03.2019 to Estate Officer, Administrator and Chief Administrator, HSVP but of no avail. A true copy of the representation is annexed as Annexure "C-24" and a true copy of the account statement of site showing levy of extension fee, is annexed as "Annexure C-25".
- xvi. That thus, the auction notice/advertisement was misleading, inasmuch as, despite clear instructions from the Technical Wing, the respondents did not



provide Zoning Plan at the time of auction or at the time of offer of possession, but at the same, they continued to charge interest illegally and arbitrarily till 08.05.2018 from the date of offer of possession, i.e., 04.10.2016/29.12.2016. The respondents failed in their obligations statutorily required to be performed in terms Section 12 of Real Estate (Regulation and Development) Act, 2016.

C. RELIEF SOUGHT

3. Complainants seek following reliefs :

- i. The Respondents may be directed to refund the amount of ₹28,82,592/- as calculated up to 01.03.2021 along with same rate of interest, which has been charged by the respondents from the complainants and/or prescribed rate of interest, whichever is higher;
- ii. Charging of extension fee may kindly be declared as illegal and respondents may kindly be directed to refund an amount of ₹17000/- along with interest @ 12% per annum.
- iii. The Authority may consider granting relief of compensation of ₹5,00,000/- for causing immense harassment, mental agony and undue hardships suffered by the complainant or in alternative this Hon'ble authority may kindly refer the claim for compensation to the appropriate forum/authority in accordance with law;



- iv. To pass any other order and/or relief in favour of Complainant as the Hon'ble Authority may deem fit and appropriate, in the interest of justice;
- v. The Complainant prays for liberty to amend, modify or claim alternative relief if so, required at a later stage.
- vi. Any other relief as this Hon'ble Authority may deem fit and appropriate.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

4. Learned counsel for the respondents filed detailed reply on 05.01.2022 pleading therein:
 - i. Respondents have challenged maintainability of the case on following grounds:
 - a. Firstly, the zoning of the site in question was already approved in the year 2002 itself and after complying with all the formalities the site in question was put in auction in the year 2016. Hence, the alleged grievances of the complainants do not cover under the provisions of the Real Estate (Regulation and Development) Act, 2016. Thus, the complaint is liable to be dismissed.
 - b. Secondly, respondents are the statutory government authorities constituted under the Act by the name of Haryana Shchri Vikas Pradhikaran Act, 1977 (herein referred as Act of 1977) which is a complete code itself in order to meet out any eventuality in respect of



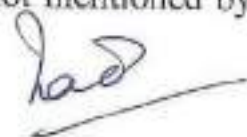
allotments made by the answering respondents. The Act of 1977 specifically raises the bar to take cognizance of the any matter for which the competent authority have the exclusive powers to do so. Hence this Hon'ble Authority has got no jurisdiction to entertain and try the present complaint by virtue of the provisions of the Act of 1977 and the complaint is liable to be dismissed.

- ii. That the plot in question was allotted to the complainants in the open auction against a total sale price of ₹2,33,12,000/-. After receipt of 25% price of the sale consideration an allotment letter dated 25.11.2016 was issued in the joint names of complainants alongwith terms and conditions duly specified therein which governs the site allotted and the terms and conditions of the allotment letter had been duly accepted by the complainants. As per terms and conditions of the allotment letter the remaining 75% price of the allotment price was required to be paid either within 60 days in lump-sum or through 8 half yearly instalments with interest being the concessional mode of payment. It is relevant to mention here that the complainants had opted for concessional mode of payment in order to pay the balance price against the plot in question. That the possession of the site in question was offered to the complainants through allotment letter itself and time of construction was also provided thereunder, according to which the construction will have to be complete within two years of the date of offer of possession after getting the plan of



the proposed building approved from the competent authority in accordance with the regulations governing the erection of buildings.

iii. That instead of submitting the building plan, the complainants started raising the issue of zoning of the site in question through representations and on 17.11.2017 the complainant had requested the answering respondents to permit the District Town Planner, Panchkula to prepare the zoning. However, the reasons behind the said request were neither communicated to the respondents nor any direct communications with the DTP was supplied and on receipt of the said representation, the officials of the answering respondent didn't find the copy of approved zoning plan in the record and vide letter dated 18.12.2017, the answering respondent requested the DTP, Panchkula to send copy of already approved zoning plan and if not approved then necessary steps be taken accordingly. The DTP, Panchkula instead of verifying the records regarding already approved zoning vide its letter dated 04.01.2018 had requested the Senior Town Planner, Panchkula to approve the zoning prepared by it as per Haryana Building Code-2017. However, upon receipt of the letter dated 04.01.2018 from the DTP, Panchkula, the STP, Panchkula had found the approved zoning plan in its record and vide its letter dated 25.01.2018, the STP, Panchkula intimated the DTP, Panchkula in respect of already approved zoning in the year 2002. The STP, Panchkula had specifically pointed out that reasons for revision of zoning was not mentioned by the



DTP, Panchkula in its request under reply and further intimated that the building plan can be approved as per earlier approved zonings. A copy of the said letter dated 04.01.2018 of the STP, Panchkula was received in the office of answering respondent on 29.01.2018.

- iv. It is however relevant to mention here that since the complainants were already in touch with the DTP, Panchkula as such they submitted the building plan with the answering respondents on 09.02.2018 through their Architects for approval and the same was sent to the DTP, Panchkula for scrutiny as per procedure on 19.02.2018 and the same was received back on 23.4.2018 in the office of answering respondents. Because of overdue of period as provided in the PPM Portal of the answering respondents due to non-response by the DTP, Panchkula, the application for sanctioning of map was rejected and the complainants were duly communicated through sms in this regard by the software system of the respondents.
- v. That complainants through their architect/structural engineer had submitted certificate of conformity to code and structural safety for residential buildings upto 15 meters height in accordance with the Haryana Building Code 2017 (FORM BR-V (A1) in which the complainants as well as their Architect had certified as follows:

"It is hereby certified that the plans submitted in (FORM BR-1 for the building detailed above are in accordance with the Haryana Building Code, 2016 and the approved zoning plan of the plot. The structure has been designed in accordance with the provisions of the National Building Code and relevant Indian Standard Code (with latest amendments)



including Bureau of Indian Standards Codes for structures resistance to earthquakes and other natural hazards. The local soil conditions, its load bearing capacity and the underground water table etc. have been kept in view while designing the same".

- vi. Perusal of the aforesaid facts representations/ requests/communications on the part of complainant as well as answering respondents, it is amply clear that the complainants have concealed the true and material facts from this Hon'ble Authority while filing the present complaint just to grab undue benefits by misguiding this Hon'ble Authority against the answering respondents.
- vii. The complainants themselves were in direct contact with the DTP, Panchkula for the reasons best known to them instead of submitting the building plan with the answering respondents and issue of non-zoning of the site in question was created by the complainant unnecessary which was never pointed out by the answering respondents to the complainant before submitting the building plan or ever been sought clearance from the answering respondents. The submission of building plan by the complainants after a gap of more than one year without any sort of objections on the part of answering respondents speaks volume itself. It is the own admission of the complainants that if there was any alleged issue of zoning (although it was not) the same was at the part of DTP, Panchkula itself not at the part of answering respondent and the DTP, Panchkula is



not a party to the present complaint, hence complaint is not maintainable on this ground as well.

viii. That the complainants had alleged that some meetings were happened with the DTP as well as answering respondents. A meeting was held on 26.11.2019 on the representation dated 03.01.2019 of complainants and in that meeting the issue regarding zoning was clarified again. Ultimately the DTP, Panchkula vide its letter dated 03.03.2020 had communicated that the request of alleged non zoning is not tenable. The meetings as alleged in the complaint were conducted at the asking of complainants only. However the complainants had nowhere raised the issue of alleged non-zoning at the time of receipt of allotment letter.

ix. That it is nowhere mentioned in the instructions dated 13.11.2007 and 21.04.2009 (Annexure C-1 & C-2, respectively) that interest is not payable by the allottees before approval of zoning plans. These instructions were issued for timely approval of zoning plans and both the instructions do not supersede the terms and conditions of the allotments which stand issued as provisions of the Act of 1977 and the regulations framed under the Act.

E. REJOINDER ON BEHALF OF COMPLAINANTS

5. Learned counsel for the complainants filed a short rejoinder on 08.04.2022 pleading therein:

i. That zoning plan was alleged to have been approved in the year 2002 is not on record till date and respondents have failed to explain the



reasons and purpose of communication dated 25.01.2018 in response to communication dated 04.01.2018 exchange between Senior Town Planner, Panchkula and office of District Town Planner, Panchkula has not been placed on record. Therefore, the provisions of Real Estate (Regulation and Development) Act 2016 are applicable in the facts and circumstances of present case.

- ii. That the complainants have not availed any concessional mode of payment and contrary to the understanding of the respondents; they have charged interest on the instalments. The completion of construction within two years from the date of offer of possession necessarily means that zoning plan is in place. However, the records of the case would show that respondents themselves did not have any clarity on the applicable zoning plan. Further, the respondents have themselves stated in their reply that the official of respondents did not find the copy of the approved zoning plan in their records qua the allotment in favour of the complainants. The period for which, the respondents were unable to clarify and identify the correct zoning plan, has to be treated as zero period. The communication dated 02.02.2018 has no relation insofar as the issues involved in the present complaint are concerned. The grievance of the complainants is not with regard to revised floor area ratio. In the corresponding paragraph, there is a candid admission on the part of the respondents



that DTP Panchkula did not respond to the repeated applications for approval of building plans. However, in very strange manner DTP Panchkula has been held to be responsible for the present situation, without stating as to what action has been taken against him, in case the respondents intend to disown the acts and inaction of their own officials. The stand taken by the respondents established on record that even the respondents have a grievance against their own internal system. The fact is that instead of mudslinging, the respondents should have ensure that the applicable zoning plan should have been made part of the offer of possession letter and/or should have been displayed/disclosed on the official website at the time of auction proceedings. If their own officials are not under their control and are harassing general public, the complainants have no option but to avail their legal remedies.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS

6. Learned counsel for complainants reiterated the basic facts of the case and put attention of the Authority on "Annexure C-1" annexed at page no. 17 of the complaint book whercin instructions are given by the Chief Administrator, HSVP, Panchkula dated 13.11.2007 wherein, it is specifically mentioned that no plot other than residential shall be floated/ advertised for sale without approval of zoning plan in advance, which



should be displayed/ published at the time of advertisement/ auction etc. On the other hand, respondent completely violated the said condition and issued allotment letter to the complainants without attaching zoning plan alongwith. She further referred to "Annexure C-2" attached to the complaint on page no. 19 and mentioned point no. (i) of the said instructions dated 21.04.2009 wherein it is stated that *"No possession of plot should be given without a copy of the zoning plan which should be incorporated in the possession letter itself."* Learned counsel for complainants further mentioned that the E-auction notice annexed as "Annexure C-3" was published by respondents on 03.10.2016 but without zoning plan which shows clear violation of instructions dated 13.11.2007 and 21.04.2009. Even the brochure showing detailed terms and conditions for auction of commercial sites in the Estate Office, HUDA, Panchkula annexed on page no. 22 of the complaint book was issued without zoning plan. Furthermore, she pointed out the condition no. 13, 16 and 18 of the said brochure which clearly specifies regarding the payment procedure which has to be followed by the complainants. Respondents issued allotment letter dated 25.11.2016 to the complainants. Clause 5 of the said allotment letter reads as *"the possession of the site is hereby offered with this allotment"*. However no offer of possession was attached to the said allotment letter. Possession certificate was issued to complainants on 29.12.2016. The issue started when complainants vide letters dated



17.11.2017, 18.12.2017, 19.12.2017 sent an application to the respondents asking whether zoning plan for the booked unit is available with HSVP or not? Complainants requested vide letter dated 03.01.2018 to respondents to waive off the interest amount as per HSVP policy due to the reason that site was auctioned by the respondents without approving the zoning plan. Subsequently, a letter dated 25.01.2018 was sent by the office of the Senior Town Planner, Panchkula to the District Town Planner, Panchkula which states that the zoning plan of clinic was approved in the year 2002 but the reason for revision of zoning plan is not mentioned by DTP, Panchkula. Thereafter, the sanction letter of approval of building plans dated 08.05.2018 was submitted for approval on 15.09.2017. However, it came to the knowledge of complainants through an official website of the respondents that the application dated 15.09.2017 was rejected. Lastly, learned counsel for complainants requested the Authority to direct respondent to refund the excess amount that respondent has taken in lieu of interest.

7. On the other hand, learned counsel for respondents submitted that zoning plan was approved way back in the year 2002 and once plot is allotted to complainant, DTP comes out of the picture.
8. Authority put forth following specific questions to learned counsel for respondents:



- i. Firstly, that when did complainant requested the respondent to permit the DTP Panchkula to prepare the zoning plan for the site in question?

To which, learned counsel for respondents replied that vide letter dated 17.11.2017, complainant sent a letter to respondent with regard to the request to permit D.T.P. Panchkula to prepare the zoning plan for the site. Same is annexed as "Annexure R-4" to the reply. He further stated that after receiving of said letter, respondent sent a letter to the District Town Planner, Panchkula requesting him to send a copy of approved zoning plan of the site in question and if the same is not approved then necessary action should be taken.

- ii. Secondly, when complainant was allotted a unit, whether zoning plan was displayed on the official website or not?

Learned counsel for respondent referred to "Annexure R-9" attached to reply wherein respondent has sent a letter to complainant no. 1 for revision of zoning plan and increase in floor covered area for clinic sites in Panchkula. However, perusal of "Annexure R-9" revealed that the said letter was issued in the year 2018.

9. Learned counsel for respondents further argued that payment terms of 'sale/lease of land or building by auction are part of Haryana Urban



Development (Disposal of Land and Buildings) Regulations, 1978. Similarly, the allotment letter Form "CC" is part of these regulations, wherein it is clearly mentioned that the allottee has choice to make. He further stated that respondents requested the complainants to submit building plans but complainants did not comply with the same. Rather complainants are avoiding their liabilities and trying not to pay extension fee.

10. In addition to this, learned counsel for respondent while making his submission drawn the attention of the Authority to the provisions of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, wherein Regulation 6 prescribes the mode of payment in case of sale/lease of land or building by auction. Regulation 6 stipulates that the successful bidder shall be issued allotment letter in Form 'CC' or 'C-II' by registered post and another 15 per cent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 per cent amount already deposited shall stand forfeited to the Authority and the successful bidder shall have no claim to the land or building auctioned. Further, the payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation 5 and the general terms and conditions of the auction



shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot. Form CC, i.e., form of allotment letter also stipulates that upon payment of 25% of the bid money, the successful bidder can make payment of balance 75% of the amount either lump sum without interest within 60 days from the date of issue of allotment letter or in 8 half yearly installments. The charging of interest on the balance payment by an allottee in installment is on account of value for money. Respondent had charged interest on the balance amount, so that the party receiving the payment is compensated for the opportunity cost of not having immediate access to those funds. The concept of "value for money" encapsulates the idea that parties should receive fair and reasonable benefits or returns in exchange for what they give or invest. Therefore, charging interest on the balance amount from the complainants aligns with the principle of value for money by ensuring that both parties to a financial transaction receive fair and equitable benefits relative to the resources they contribute or provide, which would not have been the case if complainant would have made the payment in lumpsum mode as described above.

11. He further argued that any executive instructions cannot supersede the provisions of the Act, Rules and Regulations framed thereunder. Therefore, the complainants cannot take advantage of an executive



instruction to his favour over and above the provisions of Act, Rules and Regulations.

G. ISSUES FOR ADJUDICATION

- i. Whether offer of possession made by respondents on 29.12.2006 is legally valid or not?
- ii. Whether complainants are entitled to get refund of the excess amount charged by respondent on account of delay in payment and extension fees along with interest or not?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

12. The Authority has gone through the rival contention and the documents placed on record. It is admitted by both the parties that the complainants purchased a clinic site in the e-auction held on 03.10.2016 for total sale consideration of ₹2,33,12,000/-. Being the highest bidder in the E-auction, complainants were allotted Clinic site no. 6 at Sector 15, Panchkula vide allotment letter dated 25.11.2016. Possession of the booked site was offered vide the said allotment letter. Possession of the site was taken by the complainants on 29.12.2016.
13. Respondents had challenged maintainability of the case on following grounds:
 - i. Firstly, zoning of the site was already approved in the year 2002 itself and the site in question was put in auction in the year 2016, hence the



grievances of complainants do not fall under provisions of RERA Act, 2016.

With regard to the said objections, reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-

"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case." "45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest." "53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the

applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection. 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act. Moreover, the clinic site was put to auction and allotment letter issued after the enactment of RERA Act, 2016 and hence the matter is squarely covered under the RERA Act.



- ii. Respondents have taken a plea that respondents are the statutory government authorities constituted under the Act by the name of Haryana Shehri Vikas Pradhikaran, 1977, which is complete code in itself. Therefore, this Authority has no jurisdiction to entertain and try the present complaint by virtue of provisions of the Act of 1977.

With regard to the contention of the respondents that HSVP is a statutory authority, constituted and governed by HSVP Act, 1977, and therefore, HSVP Act, 1977 will prevail over any other law, Authority has made it very clear in *Complaint no. 1323 of 2021 titled as "Aditi Singh versus Estate Officer, HUDA (now HSVP)* that HSVP is a promoter and there exist a allottee-promoter relationship between the parties, and the matter is related to real estate project, therefore, by virtue of section 89 of the RERA Act, 2016 "*the provision of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force*". Moreover RERA, Act 2016 is a law made by the parliament and will prevail over law made by the legislature of the State by virtue of Article 254 of the Constitution.

Therefore, with reference to the points discussed at para 11 (i) and (ii) of the said order it is very clear that this complaint is very well maintainable before the Hon'ble Authority.



14. With regard to the issue whether respondents have made a legally valid offer of possession dated 29.12.2016 to complainants or not? To adjudicate the same, Authority read instructions issued by the Chief Administrator, HUDA, Panchkula dated 13.11.2007 and 21.04.2009 annexed as "Annexure C-1 and C-2" to the complaint book respectively. Condition no. 7 and 8 of letter dated 13.11.2007 along with Condition no. (i) and (ii) of letter dated 21.04.2009 are reproduced below:

7. *"no plot other than residential shall be floated/ advertised for sale without approval of zoning plan in advance, which should be displayed/ published at the time of advertisement/ auction etc. otherwise the Estate Officer (not any lower rank officer) shall be personally held responsible for this lapse and shall be accountable for all consequential losses"*

8. *"No possession of the residential plot shall be given unless the zoning plan is depicted in the possession letter."*

(i) *"no possession of the plot should be given without a copy of the zoning plan which should be incorporated in the possession letter itself. If architectural drawings are applicable then number of architectural drawings should be mentioned clearly."*

(ii) *"as has already been ordered separately vide letter no. 12436-83 dated 13.11.2007, no plot other than residential plot should be put to auction unless its zoning plan has been approved and properly displayed at the time of auction otherwise Estate Officer shall be personally held responsible for lapse."*

15. After careful perusal of instructions dated 13.11.2007 and 21.04.2009 given by the Chief Administrator, HUDA, Panchkula as reproduced above, it is very clear that it is crucial to have the zoning plan approved by the



competent authorities before auctioning or allotting any unit or plot of the land. The auctioning or allotment of the unit prior to the approval of zoning plan violates the sanctity of these instructions. Therefore, it is established via these conditions that any unit that has to be put in auction after the year 2007 and 2009, it is imperative for the builder to obtain approval for zoning plans before auction/ allotment and offer of possession of the units.

16. Careful perusal of allotment letter dated 25.11.2016 and possession letter dated 29.12.2016, reveals that respondents have failed to comply with the instructions given by the Chief Administrator, HUDA, Panchkula, wherein it clearly specifies to attach the approved zoning plan to the allotment or possession letter given to the allottee. Authority is of the view that, respondents have carried out e-auction on 03.10.2016, issued allotment letter on 25.11.2016 and possession certificate on 29.12.2016 without of approved zoning plan, despite clear instructions given by the Chief Administrator, Panchkula. Even if the plea of respondents is considered that the zoning plan for the unit was approved way back in the year 2002, it cannot change the fact that at the time of auction the approved zoning plan was not displayed on the official website of the Authority. Authority is of the view that any offer of possession given without the approved zoning plan holds no relevance and is an invalid offer of possession. Therefore,



Authority deems appropriate to declare offer of possession dated 29.12.2016 as invalid offer of possession.

17. Furthermore, complainants have sought relief of refund of the excess amount of ₹28,82,592/-. To adjudicate the same, Authority paid particular attention to "Annexure C-19" of the complaint book, where complainants have calculated the aforesaid amount. Careful perusal of "Annexure-19" reveals that complainants have calculated the said amount without referencing any specific clause or provision of the allotment letter/ demand letters from where it is derived. Builder buyer agreement has not been executed between the parties and despite a thorough examination, no provision has been identified within the allotment letter that mandates or justifies such a refund to the complainant. Therefore, in absence of proper documentary evidence complainants are not entitled to get refund of the amount of ₹28,82,592/- as computed by them. This is without prejudice to complainant's rights to claim refund of the excess amounts paid along with interest. Further, Authority is also not convinced with the fact that complainants who are well educated persons (doctors) have participated in auction for a property worth ₹2,33,12,000/- but were not aware of the provisions of the zoning plan i.e., ground coverage, setbacks, FAR etc.
18. Furthermore, complainants have also prayed refund of extension fees of ₹17,000/- along with interest as mentioned in para 3(ii) of the order. Complainants have also averred in their pleadings that extension fees has



been wrongly levied on the booked site by the respondent promoter even when delay in providing zoning plans and sanctioning of building plans was on the part of HSVP itself. Perusal of statement of accounts annexed as "Annexure C-25" on page no. 79 of the complaint book proves that complainants have made a payment of ₹22,500/- on account of extension fees to the respondent on 03.07.2019. Furthermore, the complainants wrote a letter dated 25.03.2019, to the respondent promoter, attached as "Annexure C-24" in the complaint book. In the said letter, complainants requested the respondent promoter to refund the extension fees unlawfully charged by the respondent due to delays in sanctioning the building plans.

19. Authority is of the view that respondents have auctioned the site and even offered possession of the site without approval of the zoning plan. The reason that respondent charged an extension fees from the complainant was due to delay caused in starting of the construction on behalf of complainants. As per clause 15 of the allotment letter dated 25.11.2016, *complainant were bound to complete the construction within two years of the date of offer of possession after getting the plans of the proposed building approved from the competent Authority in accordance with the regulations governing the erection of the buildings.* In captioned complaint respondent offered possession of the booked site to the complainants on 29.12.2016. However, Authority has already declared the said offer of possession as invalid offer of possession due to non availability of



approval of zoning plan at the time of offer of possession (as mentioned in Para 14 of the order). Therefore, charging extension fees after the expiry of two years from the offer of possession is completely invalid. Furthermore, the documents clearly indicate that the delay attributed by the complainant, was actually caused by the respondent's delay in providing the approved zoning plan and sanctioning the building plan.

20. Therefore, the respondent is deemed responsible as they did not furnish the required approvals for the zoning and building plans promptly, resulting in the delay. Consequently, the delay in the proceedings can be ascribed to the actions or inactions of the respondent. So, the Authority finds it a fit case for refund of paid extension amount along with interest.
21. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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;



22. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".

23. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date respective dates, i.e., 26.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% ,i.e., 10.85%

24. From above discussion, it is amply proved on record that respondent has failed to perform his part of duty properly. Thus, respondent will be liable to pay the complainant the amount charged on account of extension fees along with interest. It is pertinent to mention here that complainant initially paid an amount of ₹22,500/- on 03.07.2019 as extension fees to the respondent out of which an amount of ₹5500 was already refunded back to the complainants on 19.08.2020. Therefore, respondent is liable to pay interest on refunded amount of ₹5500/- from the date of payment i.e.,



03.07.2019 to date of refund i.e., 28.09.2020 (complainant has pleaded in complaint book on page no. 12 that an amount of ₹5500/- was refunded back to the complainant on 19.08.2020. However, "Allottee account statement" attached by complainant as "Annexure C-25" on page no. 81 of complaint book reveals that an amount of ₹5500/- was refunded back to complainant on 28.09.2020. Hence, Authority deems appropriate to rely on the allottee statement account and consider date of refund of an amount of ₹5500/- as 28.09.2020) alongwith interest on the balance amount of ₹17,000/- from the date of payment i.e., 03.07.2019 to date of order i.e., 26.02.2024.

25. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no.	Principal amount	Date of payments	Date of refund/ date of order (Para 24 of the order)	Interest from date of payments till date of refund
1.	₹17,000/-	03.07.2019	26.02.2024(Date of order)	₹8512/-
2.	₹5500/-	03.07.2019	28.09.2020(Date of refund)	₹735/-
	Total= ₹22,500/-			Total= ₹9,247/-

Total amount to be refunded to the complainant is calculated as:-

$$₹22,500/- + ₹9,247/- = ₹31,747/-$$



26. Further, the complainant is seeking compensation of ₹5,00,000/- on account of harassment, mental agony and undue hardships caused to the complainant. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. &ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY


27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondents are directed to refund the amount charged from the complainants on account of extension fees to the complainants as mentioned in para 25.



- (ii) A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

Disposed of. File be consigned to record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]