

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

Complaint no. : 6263 of 2022
Complaint filed on : 19.09.2022
Date of decision : 21.05.2024

Mrs. Kuldip Duggal
Mrs. Rachna Bindra
Both R/o: H.No. 07, Green Park, Cool Road, Jalandhar
(Punjab).

Complainants

Versus

M/s Haryana Shahari Vikas Pradhikaran (HSVP).
Regd. Office: Plot No. C-1, Tower-2, GTPL Bulding,
Infocity, Sector-34, Gurgaom.

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

Appearance:

Shri Ishaan Dang
Shri Vivek Verma

Advocate for the
complainants
Advocates for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for

violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. 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:

S. N.	Particulars	Details
1.	Name of the project	Sector 57, Gurgaon
2.	Project area	3.78 acres
3.	Nature of the project	Residential Plot
4.	Allotment Letter to original allottee	02.02.2005 (Page 24 of the complaint)
5.	Re- allotment	11.04.2005 From original allottee to Joginder Singh 08.01.2008 From Joginder Singh to Lovely Sehgal 13.01.2010 From Lovely Sehgal to complainant (Page 26, 30, 34, 36 of complaint)
6.	Plot no.	2280 (Page 24 of the complaint)

7.	Plot area admeasuring	286 sq. mtr. (Page 24 of the Complaint)
8.	Possession clause	<i>7. The possession of the site will be offered to you on completion of the development works in the area , where the site is situated.</i> (Page 24 of complaint)
9.	Due date of possession	02.02.2008 (calculated as 3 years from the date of allotment)
10.	Total sale consideration	Rs. 12,01,200/- (As per allotment letter on page no. 24 of the complaint) Rs. 50,61,450/- (Total cost of property as per account statement with enhanced cost of Rs. 38,60,250/-)
11.	Amount paid by the complainants	Rs. 50,61,450/- (As alleged by the complainant on page no. 15 of complaint)
12.	Occupation certificate /Completion certificate	Not obtained
13.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:



- a. That the representatives of the respondent made an elaborate presentation to the original allottee. On relying upon the promises and assurances proffered by the Respondent and enticed by the attractive picture portrayed by the Respondent, the original allottee was induced to book a residential plot situated in Sector 57, Gurugram.
- b. That the respondent had issued allotment letter dated 02.02.2005 to the original allottee vide which plot bearing no.2280 admeasuring 286 square meters and situated in Sector 57, Gurugram (hereinafter referred to as "said plot") had been allotted in favour of the original allottee.
- c. That the total sale consideration price of the said plot had been fixed at Rs.12,01,200/- and the same had been duly mentioned in the aforesaid allotment letter. The respondent had assured the original allottee that possession of the said plot would be handed over to the original allottee within a period of maximum 3 years from the date of issuance of allotment letter dated 02.02.2005.
- d. That the respondent had intentionally omitted to mention the due date of possession in the aforesaid allotment letter dated 02.02.2005. The respondent had merely mentioned in Clause 7 of the allotment letter that possession of the said plot would be offered to the original allottee upon "completion of the development works in the area, where the site is situated".
- e. That the original allottee protested against the inclusion of the arbitrary and illegal clauses which were tilted in favour of the respondent and demanded that the allotment letter be amended so as to result in an equitable balance of power between both parties in a fair



and reasonable manner. However, the respondent refused to accede to the just and fair requests of the original allottee.

- f. That thereafter, the said plot had been sold by the original allottee to Mr. Joginder Singh, son of Shri Jawahar Singh. Copy of the re-allotment letter dated 11.04.2005 issued by the respondent in favour of Mr. Joginder Singh has been appended as **Annexure C2**.
- g. That subsequently, the said plot had been sold by Mr. Joginder Singh to Smt. Lovely Sehgal, wife of Shri Rajan Sehgal. Copy of the re-allotment letter dated 08.01.2008 issued by the respondent in favour of Smt. Lovely Sehgal has been appended as **Annexure C3**. It would not be out of place to mention that the area of the said plot had been mentioned as 278.74 square meters in the aforesaid re-allotment letter.
- h. That the respondent was liable to hand over possession of the said plot to the allottee latest by 02.02.2008. However, the respondent failed to hand over possession of the said plot to the allottee by the stipulated date. In fact, the respondent taking advantage of the ignorance of law exhibited by Smt. Lovely Sehgal intentionally did not get incorporated the timeline in respect of handing over of possession of the said plot. Furthermore, the respondent intentionally omitted to include the clause pertaining to compensation liable to be paid by the respondent to the allottee in case of delay in handing over of possession of the said plot to the allottee.
- i. That the respondent kept raising further demands from Smt. Lovely Sehgal without there being any progress in the so-called development works in the area where the said plot was situated. Eventually, Smt. Lovely Sehgal got impatient and tired of the lackadaisical approach of



- the officials of the respondent. Ultimately, Smt. Lovely Sehgal decided to transfer her allotment the said plot in favour of the complainants.
- j. That Smt. Lovely Sehgal executed the relevant transfer documents in the year 2009 in favour of the complainants. Copy of the transfer documents have been appended as **Annexure C4 (colly)**. Subsequently, re-allotment letter dated 13.01.2010 had been issued by the respondent in favour of the complainant in respect of the said plot.
- k. That even thereafter, the respondent did not disclose the date of handing over of possession of the said plot to the complainants. It would not be out of place to mention that the respondent had kept increasing the total sale consideration price of the said plot without providing explanation to the previous allottees and the complainants.
- l. That the complainants were shocked to receive letter dated 27.12.2012 (**Annexure C6**) from the respondent wherein it had been mentioned that on account of enhancement of compensation in acquisition cost of the land in question by the Court, an amount of Rs.19,19,892/- (Rupees Nineteen Lacs Nineteen Thousand Eight Hundred and Ninety Two Only) was additionally liable to be paid by the complainants to the respondent. It had further been mentioned in the aforesaid letter that in case the complainants did not make payment of the aforesaid additional amount within a period of 30 days from the date of issuance of the aforesaid letter, in that event interest at the rate of 15% per annum would be charged by the respondent.
- m. That the complainants protested against the unilateral increase in the total sale consideration amount of the said plot. The complainants further reminded the officials of the respondent that till date, the officials of the respondent had not provided any clarity in respect of the



date of handing over of possession of the said plot. However, the Respondent flatly refused to entertain the just and legal apprehensions of the complainants and threatened to cancel the allotment and forfeit the amount paid by the complainants. Faced with the threat of forfeiture, the complainants had no choice but to toe the line.

- n. That even thereafter, the complainants came to know that the respondent had initiated another round of enhancements as far as the costs of the plots were concerned. However, the same was not intimated to the complainants and they came to know about the enhancement only through the website of the respondent in the year 2018. The complainants had made payments of the following enhancements in the year 2018:-

Rs.1,32,337/- (Rupees One Lac Thirty Two Thousand Three Hundred and Thirty Seven Only) paid on 16.11.2018

Rs.7,94,018/- (Rupees Seven Lacs Ninety Four Thousand and Eighteen Only) paid on 16.11.2018

Rs.11,97,391/- (Rupees Eleven Lacs Ninety Seven Thousand Three Hundred and Ninety One Only) paid on 29.11.2018

- o. That the complainants kept approaching the officials of the respondent to enquire about the status of the said plot and the date of handing over of possession of the said plot to the complainants. It would not be out of place to mention that the complainant no.1 (Smt. Kuldip Duggal, aged 83 years) and complainant no.2 (Dr. Rachna Bindra, aged 49 years) have invested their hard earned savings and had taken loans to make payment of the exorbitant enhancement costs regularly imposed by the respondent in respect of the said plot.



- p. That ultimately, the complainants were constrained to issue letter dated 31.05.2019 to the respondent requesting it to issue an offer of possession in respect of the said plot so that the complainants would proceed with the execution and registration of the conveyance deed in respect of the said plot. It had further been mentioned in the aforesaid letter that the complainants planned to construct their house over the said plot.
- q. That it would not be out of place to mention that till date the complainants have made the complete payment of Rs.50,61,450/- (Rupees Fifty Lacs Sixty One Thousand Four Hundred and Fifty Only) to the respondent in respect of the said plot. It would not be out of place to mention that the respondent had increased the total sale consideration amount of the said plot to Rs.50,61,450/- (Rupees Fifty Lacs Sixty One Thousand Four Hundred and Fifty Only) from the initial total sale consideration amount of Rs.12,01,200/- (Rupees Twelve Lacs One Thousand and Two Hundred Only). Furthermore, the aforesaid sale consideration amount of Rs.50,61,450/- included "enhancement cost" of Rs.38,60,250/- (Rupees Thirty Eight Lacs Sixty Thousand Two Hundred and Fifty Only) which had been imposed unilaterally by the respondent. The same is evident from statement of account dated 09.08.2022 (**Annexure C8**) issued by the respondent to the complainants. The factum of complete payment made by the complainants to the respondent is also evident from allottee account information downloaded from the website of the respondent.
- r. That the complainants had made all the payments to the respondent as and when demanded by the respondent. The payments had been made by the complainants regularly even though the respondent had kept



the complainants in the dark since January, 2010 about the status of the said plot and the tentative date of handing over of possession of the said plot to the complainants.

- s. That the complainants had on various occasions contacted the respondent and enquired about delivery of possession. Finally, about a week prior to filing of the present complaint, the respondent after some evasion and prevarication confessed that it would not be in a possession to deliver possession as per its promises and commitments. Upon being intimated of the same, the faith and conviction of the complainants in the respondent and its officials was shaken.
- t. That even till date the Respondent has not initiated the hand over process of the said plot. Furthermore, to the best of knowledge of the complainants, the respondent has not registered the project/plots in question with RERA. Thus, prima facie, the Respondent is in violation of RERA and the Rules made thereunder and is liable to be penalised for its violations and transgressions.
- u. That the present complaint is limited to seeking interest on delayed possession. The complainants reserve their right to seek compensation and rectification of any defects, shortcomings or deficiencies in the said plot.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s)
 - a. The complainants respondent may kindly be directed to hand over possession of the plot bearing no.2280 admeasuring 287.74 square meters and situated in Sector 57, Gurugram to the complainants in



terms of allotment letter dated 02.02.2005 and re-allotment letter dated 13.01.2010 issued by the respondent to the complainants.

- b. That the respondent may kindly be directed to make payment of the delayed payment charges from 02.02.2008 till date on account of failure of the respondent to hand over possession of the said plot to the complainants.
 - c. That the respondent may kindly be directed to pay pendentelite interest and future interest at the rate of 18 % per annum to the complainants from the date of filing of the complaint till realization of the entire outstanding amount.
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 respondent

6. The respondent contested the complaint on the following grounds:
- a. That in the present case the Plot No.2280, Sector 57, Gurugram was originally allotted in the name of Sh. Yoginder Singh on 2.2.2005. Hence, the matter does not fall within the ambit of aforesaid section of RERA Act 2016.
 - b. That the land situated in village Wazirabad was acquired vide award no. 9 dated 21.07.2003 for development and utilization of land by Haryana Shehri Vikas Pradhikaran (HSVP). The possession of land in question after passing of the award and offering compensation was taken by the Acquiring Authority vide Rapat No. 569 dated 21.07.2003



and handed over to the HSVP free from all encumbrances. The land was acquired for residential, commercial and institutional area Sector 57 at Gurugram. The planning of the area was finalized and approved by the competent authority vide memo no. 22 dated 02.01.2004. Thereafter, the sector was floated by HSVP and booking commenced on 12.02.2004 and draw of lots was held by HSVP on 25.11.2004.

- c. That it is respectfully submitted that Plot No.2280, Sector 57, Gurugram was originally allotted in the name of Sh. Yoginder Singh on 2.2.2005. As per the terms of the allotment, possession of the site was to be offered on completion of the development works in the area, where the site is situated.
- d. The plot was transferred in the name of Sh. Joginder Singh on 11.4.2005, in favour of Smt. Lovely Sehgal on 8.1.2008 and thereafter in the name of Smt. Kuldip Duggal and Dr. Rachna Bindra (present complainants) on 13.1.2010. As per record, possession of the plot has not been offered.
- e. That the complainants submitted an affidavit dated 10.12.2009 deposing that he will abide by the provisions of HSVP Act/Rules and Regulations applicable thereunder and as amended.
- f. That CWP No. 20563 of 2017 titled as Kalawati&Ors vs State of Haryana and Others was filed impugning the acquisition of land and Hon'ble High Court of Punjab and Haryana at Chandigarh was pleased to allow the said petition vide order/ judgment dated 18.12.2017.



Thereafter, Diary No.27685/2019 - SOH & Ors. vs. Kalawati & Ors. was filed and which is pending at adjudication. Accordingly, on one hand, acquisition is being disputed after many years of its finality, and after allotment of plots, on other hand, the allottees/re-allottees are filing the complaints or writ petitions against answering respondents raising claims for alternate plots. In both the cases, it is the answering respondents who are suffering immensely, financially, physically due to unwarranted and frivolous litigations.

- g. That the present case is covered by the judgment dated 21.01.2021 of this Hon'ble Court in CWP No. 21830 of 2020 titled as Ajit Singh Vs. HSVP and others are relevant to note:-

“.....It is, thereafter, that the petitioner had purchased this plot from the original allottee. Petitioner being very much aware of the fact with regard to the plot which he was purchasing cannot now turn around and claim entitlement to the benefit of the original plot which was allotted to the original allottee i.e. Plot No.2416P, Sector 57, Gurugram. Further we do not find the policy relating to exchange of plot dated 18.02.2013 (Annexure P-11)) being applicable to the case of the petitioner in the light of the fact that the said policy is only limited to the allottee and further none of the clauses of the policy provide for it once alternative plot has been accepted and allotted. Petitioner having purchased a particular plot knowing fully well that the said plot has been received by the original allottee and had sold the same, petitioner would not be entitled to the



benefit of the said policy. The impugned order dated 13.10.2020 (Annexure P-14), passed by the Chief Administrator, HSVP, Panchkula cannot be said to be without any basis or in accordance with the policy of the respondents.....”

In the above decision the Hon'ble High Court has categorically held that re-allottee is not entitled to allotment of alternative plot. In view of the categorical findings of this Hon'ble Court, the present complaint is not maintainable in the eyes of law.

- h. That the present complaint is liable to be dismissed for the reason that no cause of action ever arose to file the present complaint and if any the same is false, frivolous, and fabricated one and the present complaint has been filed illegally, malafidely with dishonest intentions, in order to create undue pressure over the Respondent without any cause thereof. In such circumstances, the present complaint is liable to be dismissed without any further proceedings.
7. All other averments made in the complaint were denied in toto.
8. 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 complainant.

E. Jurisdiction of the authority



9. 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

10. 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

11. 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.

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.

12. 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 relief sought by the complainant

a. The complainants respondent may kindly be directed to hand over possession of the plot bearing no.2280 admeasuring 287.74 square meters and situated in Sector 57, Gurugram to the complainants in terms of allotment letter dated 02.02.2005 and re-allotment letter dated 13.01.2010 issued by the respondent to the complainants.

b. That the respondent may kindly be directed to make payment of the delayed payment charges from 02.02.2008 till date on account of failure of the respondent to hand over possession of the said plot to the complainants.

c. That the respondent may kindly be directed to pay pendentelite interest and future interest at the rate of 18 % per annum to the complainants from the date of filing of the complaint till realization of the entire outstanding amount

The above mentioned reliefs no. F.a, F.b & F.c as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

13. The respondent-builder allotted the subject unit in favour of the original allottee on 2.2.2005. As per the terms of the allotment, possession of the site was to be offered on completion of the development works in area, where the site is situated. Thereafter, the plot was transferred in the name of the Sh. Joginder Singh on 11.04.2005, in favour of Smt. Lovely Sehgal on 8.1.2008 and in the name of Smt. Kuldip Duggal and Dr. Rachna Bindra (present complainants) on 13.01.2010.
14. During the course of proceeding, the counsel for the respondent stated that the land under question has been released vide orders passed by the Hon'ble Punjab and Haryana High Court in CWP No. 20563/2017 titled as Kalawati and others versus state of Haryana and others vide judgment date 18.12.2017. Thereafter, SLP filed in the Hon'ble Supreme Court of India, which has been disposed of and a review petition is pending. So, the possession of the plot allotted cannot be handed over to the complainant. On the contrary, the counsel for the complainant stated that vide order dated 11.07.2023, the Hon'ble Supreme Court of India, the aforesaid petition and all connected matters had been dismissed by the Hon'ble Apex Court.
15. Thereafter, the respondent states that as per policy of HSVP, it can refund the amount deposited by the complainant with interest @ 5.5% per annum.

So far as the policy quoted by the respondent is concerned, it is pertinent to refer section 89 of the Act, 2016 which is reproduced as below:

Section 89: Act to have overriding effect.

89. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

16. Section 89 of the RERA Act of 2016, leads to the conclusion that provision of this Act will have over-riding effect notwithstanding anything inconsistent therewith contained in any other law. Further, after coming into force of RERA Act, jurisdiction to entertain any suit or proceeding in respect of any matter which the authority is empowered under this Act to determine shall be that of the RERA only.
17. In the present complainant, 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."

18. Clause 7 of the allotment letter provides the time period of handing over possession and the same is reproduced below:

7 the possession of the site will be offered to you on completion of the development works in the area, where the site is situated.

19. At the inception, it is relevant to comment on the pre-set possession clause of the allotment letter wherein the possession has been subjected to vague terms and conditions. The incorporation of such clause in the allotment letter by the promoter is just to evade the liability towards timely delivery of the subject plot and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the respondent has misused his dominant position and the allottee is left with no option but to sign on the dotted lines.
20. **Due date of possession:** In view of the above clause of the allotment letter and absence of any other agreement, 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."

21. In the instant case, the respondent has allotted a plot in its project vide allotment letter dated 02.02.2005 in favour of the original allottee. 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 02.02.2008.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charge the amount paid by them at the prescribed rate of interest and intend to withdraw from the project and is seeking delay possession charge of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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. 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.

24. 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., 21.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—
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 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;"

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. In the present case, the complainant/subsequent allottees had purchased the unit after expiry of the due date of handing over possession but before the coming into force of the Act, the authority is of the view that the subsequent allottee cannot be expected to wait for any uncertain length of time to take

possession. Even such allottees are waiting for their promised plots and surely, they would be entitled to all the reliefs under this Act. It would not be fair to assume that the subsequent allottee had no knowledge of delay. However, to attribute knowledge that such delay would continue indefinitely, based on prior assumption, and would not be justified. Therefore, the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. re-allotment letter. The complainants were the third subsequent allottee and the subject unit was transferred in the name of the complainants on 13.01.2010. 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 delayed possession at prescribed rate of interest i.e., 10.85 % p.a. w.e.f. date of re-allotment letter dated 13.01.2010 till the offer of possession plus 2 months or handing over of possession, whichever is earlier.

28. It has also been brought to the notice of the Authority that land upon which plot of the complainant was situated has been released from acquisition. In such circumstances, when the complainant wishes to continue with the project, it becomes the liability of the respondent to allot an alternate plot of similar size, price and similar location to the complainant in lieu of the original plot which is no longer available. The complainant cannot be forced to accept refund of the amount deposited with an interest at a mere 5% per annum.

G. Directions of the authority

29. 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) of the Act:


- i. The respondent builder is directed to allot any alternate plot of a similar size, price and similar location in favour of the complainant.
- ii. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from the date of re-allotment to the complainants i.e., 13.01.2010 till the offer of possession after completion of basic services plus 2 months or handing over of possession, whichever is earlier. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which, legal consequences would follow.
- iv. The respondent is directed to hand over the possession to the complainant-allottees on payment of outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the

respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

30. Complaint stands disposed of.
31. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 21.05.2024

HARERA
GURUGRAM