

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

Complaint no. : 5935 of 2022
Date of filing : 20.09.2022
Date of decision : 28.05.2024

1. Om Prakash Sharma
2. Ashok Kumar Sharma through its LR's Akash Sharma, Sagar Sharma and Shubhum Sharma.
3. Kususuk Lata Sharma.
4. Geeta Sharma
5. Shivas Departmental Stores
6. Jtoti Sharma
7. Eti Sharma
8. Vikas Sharma
9. Chetan Sharma
All R/o 25, Defence Enclave, Vikas Marg, Delhi-110092.
10. P.K. Sharma.
11. Usha Sharma
Both R/o - 4, Ramchandra Lane Ram Kishore Road, Civil Lines-110054

Versus

M/s Ramprashtha Estate Private Limited
Mr. Amit Yadav (Director)
Office at: Plot no. 114, Sector- 44, Gurugram- 122002

Complainants

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Shri Sanjeev Sharma
Shri Divyanshu Proxy Counsel

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 20.09.2022 has been filed by the complainant/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 allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The present complaint is filed by 11 individuals The particulars of unit details, sale consideration, the amount paid by the complainants, have been detailed in the following tabular form:

Name of the project	Ramprastha City, Sector- 37-D					
Project Area	Cannot be ascertained					
Complainant	Cheque No.	Amount paid by the complainant (Rs.)	Bank	Size of the Plot	Total sale consideration	Balance Amount
Om Prakash Sharma Complainant No.1	239451	5,00,000	ICICI Bank	500 Sq. Yd	Rs. 97,50,000/-	Rs. 82,50,000/-

Om Prakash Sharma Complainant No.1	306289	5,00,000	BOM Bank	500 Sq. Yd		
Om Prakash Sharma Complainant No.1	28356	5,00,000	ICICI Bank	500 Sq. Yd		
Ashok Kumar Sharma Complainant No.2	322267	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Kusum Lata Sharma Complainant No.3	518656	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
P.K Sharma Complainant No.4	320565	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Usha Sharma Complainant No.5	320546	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Geeta Sharma Complainant No.6	305127	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Shivas Departmental Store Complainant No.7	330194	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-

Jyoti Sharma Complainant No.8	320546 329646	5,00,000 5,00,000	BOM Bank BOM Bank	500 Sq. Yd	Rs.32,50,000/-	Rs. 27,50,000/-
ETI SHARMA Complainant No.9	133847 98025	5,00,000 27,50,000	AXIS Bank AXIS Bank	500 Sq. Yd	Not placed on record	Not placed on record
ETI SHARMA Complainant No.9	0768231 196402	5,00,000 27,50,000	AXIS Bank AXIS Bank	500 Sq. Yd	Not placed on record	Not placed on record
VIKAS SHARMA Complainant No.10	307943 183577	5,00,000 27,50,000	ING Bank	500 Sq. Yd	Rs.32,50,000/-	Rs. 27,50,000/-
CHETAN SHARMA Complainant No.11	44581	5,00,000 27,50,000	BOM Bank	500 Sq. Yd	Rs.32,50,000/-	Rs. 27,50,000/-

B. Facts of the complaint

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

- i. That the present complaint is filed herein on behalf of the 11 complainants all similarly situated in the project of plotted colony in Sector 37 D Gurugram, which was supposed to be developed by OP No.1. The complainants have approached this Hon'ble Authority in

representative capacity as an association having common grievances and seeking common reliefs against the respondent. The present complaint is filed, through Mr. Om Prakash Sharma authorized representative, for all other complainants.

- ii. That the complainants herein is a helpless allottee, who have been cheated and harassed by the respondent with a promise of timely delivering of plots of area approximately 7500 sq.yards (500 each) by the year 2009 and in lieu have collected a huge sum of Rs.75,00,000/- (Rs. 5,00,000 from each of the Allottee in the year 2006 itself and further Rs.1,15,00,000(from complaint No. 8, 9, 10 & 11 as per para 2) in the year 2013-14 whereas despite a period of more than 16 years from the date of payment, there is no proper allotment of the said plots, what to talk about the possession of the plots.
- iii. That the respondent falsely and dishonestly misrepresented the complainant that respondent had made application to the Director, Town & Country Planning, Haryana, Chandigarh (DTCP. Haryana) for grant of licence to develop a housing colony in Sector 37 D Gurgaon. They further misrepresented that all formalities, compliances and documentations in respect of the said application have been completed and the licence is likely to be received soon. The respondent further falsely and dishonestly misrepresented the complainant that they have proper title and authority to make the said application and that they are in possession of the said land. The respondent also deliberately made false representations and

assurances that the development of the said colony would commence immediately upon receipt of licence.

- iv. That it is pertinent to mention here that complainant no.1 i.e. Om Prakash Sharma had booked 3 Plots detailed in the chart above and complainant No. 9 i.e. Eti Sharma booked 2 plots.
- v. The complainant No. 9 i.e Eti Sharma is a subsequent allottee who stepped into the shoes of Mr. Vibhakar and Mrs Priti Diwakar. Similarly complainant no.11 Chetan Shrama is a subsequent allottee who stepped into the shoes of Mr. Sushil Chand and the same was duly recorded in the records of the respondent.
- vi. That in lieu of the aforesaid investment, the respondent made a false and baseless promise to allot certain plots of 500 sq.yds to each of the complainants, the aggregate of which comes to be 7500 sq. yds. approx. in the said colony. It is pertinent to mention that such promise for allotment was a mere gimmick to cheat and commit financial fraud on the complainant. Particularly, as these were ghost-plots that existed only on paper possession and final documentation not being a reality.
- vii. That it is most pertinent to mention here that, after more than 6 years from the receipt of almost of Rs. 75,00,000 from the complainants, the respondent claimed to have obtained a license from the DTCP, Haryana in favour of the respondent no.1 for development of a Residential Plotted Colony, in Sector 37 D, Gurgaon ("Said Colony") however despite repeated request from the complainants, the details of the said license were never shared by the respondent. However on the basis of the said false assurance, the complainant No. 8, 9, 10 & 11

(as per para 2) made further/complete payment for their plots in the year 2013-2014 on the pretext that they would be soon handed over the Plots in question, however in vain.

- viii. That it is also pertinent to mention here that at the time of collecting the payments, it was informed to the complainants that the next installment/ amount which the complainant was supposed to pay was payable at the time of execution of plot buyer agreement and remaining consideration was payable at the time of notice of possession.
- ix. That it is pertinent to mention here that the respondent was neither having the Zonal Plan approval or the Building Plan approval on the date of the accepting the money, however despite that had sold the plots to the complainants representing that they had all the requisite approvals for the said complex. That inviting application for the said project itself was illegal in nature since on the day of inviting application for the said project, the respondent was not having the licence/ building plan approval.
- x. That the present case is a fit case where, an unscrupulous builder instead of completing the project for which money has been collected from the buyers has diverted the funds to other projects/activities/ misappropriated, since cost of borrowing for him may be higher than what he is made to pay to the buyer as interest. Therefore, this Hon'ble Authority should necessarily take a view, which will discourage any such misuse / diversion of funds by the builders and set an example by imposing very heavy cost/compensation and interest on delay.

c. Relief sought by the complainants: -

4. The complainants have sought following relief(s)
 - i. Direct the respondent to pay delay possession charges along with prescribed rate of interest.
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 has contested the complaint on the following grounds:
 - i. It is submitted that the complainants had approached the respondents and made inquiries regarding future projects of the respondents. The complainants was categorically informed there is no plot available since the zoning plans have not been approved. The complainants had voluntarily sought to advance money to the respondents in anticipation of future approval and in the hope of making speculative gains. But since the zoning plans have not been approved by the government till date, the complainants have sought to file this vexatious complaint which is completely unsubstantiated and is bereft of any material documentary evidence. The respondents has not agreed to provide any service whatsoever to the complainants since the plans were not approved by the competent authority and the complainants has not provided any documents to prove that any such promise was ever made by the respondents. The complainants has voluntarily entrusted a sum of money to the respondents so that they

will get the first priority in case the development plans eventually get approved by the competent authority. The respondents has neither promised any particular plot or location nor promised any particular price or completion date to the complainants. Hence, there is no question of any breach by the respondents and no cause of action has accrued in favour of the complainants. The present complaint has been filed with malafide intention and is an abuse of the process of the Authority which is evident from the prayers wherein the complainants had demanded hefty interest when there was no agreement between the complainants and the respondents whatsoever for either any allotment or any development and hence there exists no agreed terms for possession date or price or location/project etc., hence there are no terms which can be said to be legally enforceable under the provisions of the Real Estate (Regulation and Development) Act, 2016. The complainants is very well aware of the fact that the money entrusted by the complainants was not towards any booking or agreement but merely to ensure that in case any development approval is granted by the concerned authorities in future the complainants will get an opportunity to participate in priority of other interest customers. The complainants has filed the complaint claiming wrongful gains in the form of interest at the cost of the respondents when in reality there was no such understanding between the parties and there is no condition to attract the provisions of the Act.

- ii. That the complainants had approached the respondents in the year 2006 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 he is 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 his money or let his 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, he was not willing to participate in such projects. Since the complainants, always had such option but voluntarily opted to let his money remain with the respondents, hence he cannot be allowed to claim interest which has no legal or contractual basis. It is submitted that the Real Estate (Regulation and Development) Act, 2016 can come to the rescue of only genuine allottees and not speculative individuals like the complainants.

- iii. It is submitted that the complainants had requested the respondent seeking investment in undeveloped agricultural land in the year 2006 in the hope of making speculative gains on the approval of the zoning plans. But since the zoning plans were not approved by the government, the complainants have sought to file this vexatious complaint. That the respondent has not agreed to provide service of any kind to the complainant unless the plans were approved as it was merely a transaction for sale of plot. The complainants have filed the present complaint with malafide intention of abusing the process of this Hon'ble Authority for wrongful gains in the form of interest at the cost of the respondents when in reality their speculative investments

- have failed to give any return in present harsh real estate market conditions.
- iv. The complainants fully being aware of the dynamic prospects of the said futuristic project which was indeterminate at the point of time when the complainants paid the money and the fact that it is subject to various government approvals for which there is no time line assured by the government authorities, either promised or otherwise, have still decided to keep their money with the respondents which was clearly with a speculative purpose and such speculative acts are not protected by any law. Hence, no right of the complainants could be said to have been breached by the respondents, giving rise to any claim for interest as alleged by the complainants.
- v. That it is herein submitted that from the date of payment till the date of filing of the present complaint, the complainants has never raised any demand or claim whatsoever even though the complainants had the option at all times which show that the complainants voluntarily let his money remain with the respondents for his own selfish and speculative intents. The complainants has now approached the Hon'ble Authority with concocted and fabricated story to conceal the true matrix of the situation accordingly to which the complainants has no vested right in any determinate project but has merely paid money to be allowed to participate in case the approvals had come through. The conduct of the complainants clearly indicates that the complainants' objects and intents are speculative not only behind making the payment but also behind filing the present Complaint. It is shocking that the complainants is even today not claiming any refund

but is trying to abuse the process of this Hon'ble Tribunal to claim hefty interest which is not tenable in law in the facts and circumstances of the present case. It is submitted that the complainants is indirectly claiming specific performance for delivery of an indeterminate property on the basis of indeterminate terms which is not permissible in the eyes of law. The complainants has no vested right to claim possession of any property as it is not yet determined and hence there is no question of any delay as alleged by the complainants. It is submitted that the delay is absolutely non-existent and imaginary under the present facts and hence, there is no entitlement of any interest whatsoever.

- vi. That further 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. It is trite in law that a party claiming default must first prove the default beyond reasonable doubt by means of substantial evidence. That the complainants herein has not adduced any reasonable proofs in the nature of documentary evidence which establishes the date of possession, terms and conditions of possession, default and the consequential effect of such default. It is submitted there is no possibility of execution of a builder buyer agreement because the property is indeterminate and also there are no specific terms that have been mutually agreed.

- vii. That the complainants have approached the respondents' office and have communicated that the complainants are interested in a project which is "not ready to move" and expressed their interest in a *futuristic project*. It is submitted that the complainants were not interested in any of the ready to move in/near completion projects of the respondent. It is submitted that a futuristic project is one for which the only value that can be determined is that of the underlying land as further amounts such as EDC/IDC charges are unknown and depends upon the demand raised by the statutory authorities. It is submitted that on the specific request of the complainants, the investment was accepted towards a futuristic project and no commitment was made towards any date of handover or possession since such date was not foreseeable or known even to the Respondent. The respondent had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainants towards development charges but the complainants were duly informed that such charges shall be payable as and when demands will be made by the Government. The complainants are elite and educated individuals who have knowingly taken the commercial risk of investing a project the delivery as well as final price were dependent upon future developments not foreseeable at the time of booking transaction. Now the complainants are trying to shift the burden on the respondent as the real estate market is facing rough weather.
- viii. That even the sectorial location of the plot was not allocated by the respondent. The said Plot at the date of booking/provisional allotment was nothing more than a futuristic project undertaken to be developed



by the respondent after the approval of zoning plans and completion of certain other formalities. A plot in a futuristic project with an undetermined location and delivery date cannot be said to be a plot purchased for residential use by any standards. Therefore, the payment made by the complainants towards the said plot cannot be said to be made towards the plot purchased for residential use instead it was a mere investment in the futuristic project of the respondents. The complainants therefore only invested in the said plot so that the same can be used to derive commercial benefits/gains.

ix. It is submitted that revision in zoning plans of any development area is a cumbersome process undertaken by the State authorities and the respondents has no control over the process. The respondents was obliged to point out the various discrepancies and corrections that were required in the zonal plans and which will have a further effect on the layout of the residential plotted colony. By September 2014, it was clear that fresh zoning is required to be undertaken and this will take considerable time. This was specifically informed to all the allottees.

x. There is no averment in the complaint which can establish that any so called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainants while investing in a plot which was subject to zoning approvals were very well aware of the risk

involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the opposite party had acted in a manner which led to any so called delay in handing over possession of the said plot. Hence the complaint is liable to be dismissed on this ground as well.

- xi. That the delay has occurred only due to unforeseen and unpredictable circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the plot for which respondent cannot be held accountable. However, the complainants despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondent with a wrongful intention to extract monies.

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 on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. The objection of the respondents 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

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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)

Section 11

.....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the 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.

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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint

13. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainant has made the payment back in 2006. The objections to the same were to be raised in a time bound manner. Hence, the complaint is not maintainable on the above-mentioned ground.
14. 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:

15. 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.
16. It is important to note that despite receipt of more than consideration of Rs. 75,00,000/- against the booked plot back in 2006 except stamp duty and other charges payable to the government, the respondent-promoter has failed to execute an agreement for sale with respect to the same and has failed to get the plot registered in name of the complainants till date. As the respondent has 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.

17. 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 circumstances being 'force majeure'.

18. The respondent contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals, passing of an HT line over the layout, road deviations and depiction of villages etc. which were beyond the control of respondent. However, no document in support of its claim has been placed on record by the respondent. Hence, all the pleas advanced in this regard are devoid of merits. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Therefore, the respondent cannot take benefit of its own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G Findings on the relief sought by the complainants.

G.I Direct the respondent to pay delay possession charges along with prescribed rate of interest.

19. The present complaint is filed by the 11 complainants and payment made by them is as under:

Name of the project	Ramprastha City, Sector- 37-D					
Project Area	Cannot be ascertained					
Complainant	Cheque No.	Amount paid by the complainant (Rs.)	Bank	Size of the Plot	Total sale consideration	Balance Amount
Om Prakash Sharma	239451	5,00,000	ICICI Bank	500 Sq. Yd		Rs. Rs. 82,50,000/-

Complainant No.1					Rs. 97,50,000/-	
Om Prakash Sharma Complainant No.1	306289	5,00,000	BOM Bank	500 Sq. Yd		
Om Prakash Sharma Complainant No.1	28356	5,00,000	ICICI Bank	500 Sq. Yd		
Ashok Kumar Sharma Complainant No.2	322267	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Kusum Lata Sharma Complainant No.3	518656	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
P.K Sharma Complainant No.4	320565	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Usha Sharma Complainant No.5	320546	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Geeta Sharma Complainant No.6	305127	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-
Shivas Departmental Store	330194	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,00 0/-	Rs. 27,50,000/-

Complainant No.7						
Jyoti Sharma	320546	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,000/-	Rs. 27,50,000/-
Complainant No.8	329646	5,00,000	BOM Bank			
ETI SHARMA	133847	5,00,000	AXIS Bank	500 Sq. Yd	Not placed on record	Not placed on record
Complainant No.9	98025	27,50,000	AXIS Bank			
ETI SHARMA	0768231	5,00,000	AXIS Bank	500 Sq. Yd	Not placed on record	Not placed on record
Complainant No.9	196402	27,50,000	AXIS Bank			
VIKAS SHARMA	307943	5,00,000	ING Bank	500 Sq. Yd	Rs.32,50,000/-	Rs. 27,50,000/-
Complainant No.10	183577	27,50,000				
CHETAN SHARMA	44581	5,00,000	BOM Bank	500 Sq. Yd	Rs.32,50,000/-	Rs. 27,50,000/-
Complainant No.11		27,50,000				

20. The complainants having similar grievances and seeking similar relief against the respondent and the present complaint is filed through Mr. Om Prakash Sharma authorised representative for all other complainants to file the present complaint.

21. Vide proceeding dated 07.11.2023, the AR of the respondent states at bar that the respondent is committed to the allotment of plot to the complainants on completion of the formalities for which registration has already been granted but zoning and service estimates are awaited. Further he was directed to file an affidavit before the authority as to the status of the project in which the allotment of plot is to be made to the complainants and the time by which the allotment shall be made before the next date of hearing.
22. Vide order dated 05.12.2023, in view of the non-compliance of directions of the authority vide order dated 07.11.2023, the respondent was asked to show cause as to why penalty of Rs. 5 lakhs be not imposed and respondent was further directed to file the required affidavit within one week failing which further consequence shall follow. Despite specific directions of the Authority, the affidavit/status has not been filed by the respondent in the registry and no reply has been filed to the show cause directions for penalty of Rs. 5 Lakhs. During the course of proceeding dated 13.02.2024, the penalty of Rs. 5 lakhs was imposed upon the respondent for non-compliance of directions of the Authority u/s 63 of the Act, 2016. Subsequently, on the same day the respondent-builder filed an affidavit in the Authority and submitted that the project "Ramprastha City" located at sector - 37-D, Gurugram has received zoning approvals from the DTCP, Haryana on 16.06.2023 and respondent herein is awaiting development approvals from the DTCP,

Haryana. Further the respondent states that complainants are not entitled to any plot merely on the basis of payment receipt; as no rights have vested in their favor but it is their discretion to opt for the refund of money as a remedy which they have not done subject to the bar under the law of limitation.

23. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

24. **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. Also the complainants have not provided any receipt of the payment. However, the records include a demand letters dated 14.09.2006 issued by respondent in favor of complainants which specifies the details and sale price of the allotted unit. 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."

25. In the instant case, the complainants have not provided any receipt of the payment. However, the records include a demand letters dated 14.09.2006 issued by respondent in favor of complainants which specifies the details and sale price of the allotted unit. In view of the above-mentioned reasoning, the date of demand letter dated 14.09.2006 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 14.09.2009.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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.

27. 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.

28. 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., 28.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

29. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

30. 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 complainants in case of delayed possession charges.

31. 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 14.09.2009. However, despite receipt of more than Rs. 75,00,000/- against the booked plot back in 2006 except stamp duty and other charges payable to the government, the respondent-promoter has failed to enter into a written agreement for sale with respect to the same and has failed to handover possession of the subject plot to the complainants till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer

of possession of the allotted plot to the 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.

32. 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. 14.09.2009 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

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoters are directed to allot a specific plot of 500 sq. yds in its project namely Ramprastha City, Sector- 37-D Gurugram and execute buyer's agreement within a period of 30 days.

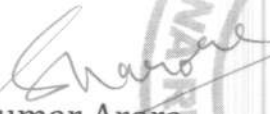
- ii. The respondents are directed to handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.
- iii. The respondent/promoters are directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 14.09.2009 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.
- iv. The arrears of such interest accrued from 14.09.2009 till the date of order by the authority shall be paid by the respondent/promoters to the complainant within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in

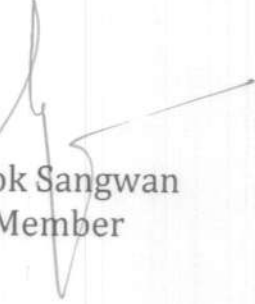
case of default i.e., the delayed possession charges as per section 2(za) of the Act

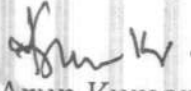
- vii. The respondents are further directed to pay penalty of Rs. 5 Lakhs imposed by the Authority vide order dated 13.02.2024 for non-compliance of directions of the Authority U/s 63 of the Act, 2016 within a period of 30 days from the date of this order.

34. Complaint stands disposed of.

35. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.05.2024