BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**7090 of 2022**
Date of filing :		**03.11.2022**
Date of decision	:	**28.05.2024**

1. Gagandeep Singh Mehndirata
2. Surinder Singh Mehndirata
R/o: - 17 Rajdhani Enclave Pitampura, New Delhi-110034 **Complainants**

Versus

M/s Ramprashtha Estate Private Limited
Office at: Plot no. 114, Sector- 44, Gurugram- 122002 **Respondent**

CORAM:

Shri Arun Kumar	**Chairman**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:

Shri Mrilan Sharma	Advocate for the complainant
Ms. R. Gayatri Mansa	Advocate for the respondent

ORDER

1. The present complaint dated 03.11.2022 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 particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Ramprastha City, Sectors 37-D, Gurugram
2.	Project area	Cannot be ascertained
3.	Plot no.	N.A.
4.	Unit area admeasuring	300 sq. Yds. (Page no. 19 of the complaint)
5.	Date of booking application	N.A.
6.	Welcome letter	N.A.
7.	Allotment letter	12.05.2011 (Page no. 20 of the complaint)
8.	Date of execution of plot buyer's agreement	N.A.
9.	Possession clause	N.A.
10.	Due date of possession	Cannot be ascertained

11.	Basic price of the plot	N.A.
12.	Amount paid by the complainant s	Rs.21,00,000/- [As per receipt information at page no. 19 of the complaint]

B. Facts of the complaint

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

I. That the complainants being aggrieved with the conduct of the respondent of not executing the builder buyer agreement and not completing the development of the said plot within the agreed period, are seeking redressal of their grievances and direction upon the respondent to hand over the possession of the said plot along with penalty for delayed possession of the said plot at the rate of 18% per annum.

II. That the respondent approached the complainants and represented them the details of the said project. It was represented that the said project would offer independent plots to its allottees with perfect planning, extraordinary standards and real estate development division in observation of their top professionals. The respondent had also assured to the complainants that they have obtained all necessary government permission and statutory approval for the development of the said project at that particular point of time itself, hence, there won't be any unnecessary delay occurring in the course for development of the said project. Considering the respondent

expertise and wherewithal the complainants were inclined to jointly apply for the allotment of the said plot.

III. That subsequently, the complainants made the payment of Rs.21,00,000/- vide cheque bearing nos. cheque nos.000109, 000321 and 000116, dated 15.09.2010 and 26.10.2010, respectively, drawn on Kotak Mahindra Bank as total consideration for the allotment of the said unit. On receipt of the aforesaid payment the respondent issued a payment receipt bearing no.499 dated 27.10.2010.

IV. That the respondent thereafter issued the provisional allotment letter for the plot admeasuring 300 square yards in the said project, assuring the complainants that they would be preferably executing builder buyer agreement soon and the as assured the possession of the said plot would handed over by the respondent within agreed time. It is pertinent to mention that in general scenario the possession of such independent plot is to be handed over within the time span of 3 years from the respective date of its allotment. However, in the present case even after a lapse of almost 09 years from the tentative due date of handing over the physical possession, the respondent had deliberately abandoned the development of the said project and did not proceeded for the development of the said plot, even till date.

V. That complainants were assured by the respondent that the possession of the said plot would be delivered / handed over as per the time agreed between the parties, however, even after lapse of 09 years, the respondent had miserably failed to offer the

possession of the said plot in the habitable area to the complainants in the said project.

VI. That despite receiving the total consideration amounting to Rs.21,00,000/- for the allotment of the said plot, the respondent had miserably failed to offer possession even till date. It is pertinent to mention that, when the complainants visited the site of the said project, to the utter shock on the part of the complainants, the said project was left abandoned by the respondent and there was no sign of development whatsoever. Moreover, site of said project was a barren land and there was no provision for electricity, no demarcation of any plots, no security, no sewage system, etc.

VII. That the complainants, thereafter approached the respondent on several occasions for the execution of the builder buyer agreement and enquire about the date of actual delivery of physical possession of the said plot, as the agreed time period has already been lapsed and the project development is not even near to its completion. Hence, the respondent had asked for some more time to deliver the possession and later assured the complainants after passing of several occasions that the builder buyer agreement would be executing very soon and also development of the said project would definitely be completed by end of the 2018 in all circumstance and they can expect the delivery of the possession of the said plot from December 2018. Therefore, in bona fide intention to receive the possession of the said plot without any hindrances and disputes, the complainants had agreed to wait and decided to hold up and grant the additional

time sought by the respondent for the completion of the said project.

VIII. That as per the assurances of the respondent, the complainants again approached the respondent on several occasions and also in the month of June 2019 which was after a lapse of almost 3.5 years from the respective date of possession as agreed between the parties. Upon enquiring about the status for delivery of possession of the said plot, the respondent was still unable to provide any reasonable justification to the complainants for non-execution of builder buyer agreement and their failure of deliver the possession of the said plot and further sought, some more time from the complainants stating that due to some unforeseen circumstances the development of the said project is not completed.

IX. That complainants had thereafter again approached the respondent in February 2020 for executing the builder buyer agreement and other statutory documents and taking the possession of the said plot, however, the same were of no avail as the respondent was still lingering the complainants and giving them false assurances time and again to execute the builder buyer agreement and other statutory documents and hand over the physical possession in near future. The aforesaid acts of the respondents clearly indicates the intentional delay and *mala fide* intent of not providing the possession of the said plot and keep lingering on the complainants.

X. It is pertinent to mention that respondent have miserably failed to handover the possession of the said plot within the agreed time

period, despite being in receipt of total consideration from the complainants. Therefore, the respondent is alsoliable to pay the penalty and compensation at the rate of 18% per annum on Rs. 21,00,000/- for the delayed period in handing over the possession of the said plot from the due date of possession i.e. 12.05.2014 till the actual delivery of physical possession of the said plot completely developed as per the definition of 'External and Internal Development' as enshrined in the provisions of Section 2 of the said Act.

C. **Relief sought by the complainants: -**

4. The complainants have sought following relief(s)

i. Direct the respondent to handover possession of the plot admeasuring 300 Square yards at Ramprastha City situated at Sector-37-D, Gurugram, Haryana to the Complainants, completely developed as per the definition of 'External and Internal Development' as enshrined the provisions of section 2 in the said Act after obtaining the occupation certificate/completion certificate.

ii. Direct the respondent to pay the delayed possession penalty at the rate of 18% per annum on Rs. 21,00,000/- by the complainants to the respondent from due date of possession 12.05.2014 till the time the actual delivery of physical possession of the said plot after obtaining the occupation certificate/ completion certificate.

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:

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I. It is submitted that the complainants had requested the respondent seeking investment in undeveloped agricultural land in the year 2010 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.

II. That the complainants have approached the respondent in the year 2010 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located, Gurugram. The complainants fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere futuristic project have decided to make an investment in the said project of the respondent for speculative gains. That thereafter, the complainants have paid a booking amount of Rs. 21,00,000/- through cheque bearing no. 000109, 000321 & 000116 dated 15.09.2010 & 26.10.2010 respectively towards booking of the

said project pursuant to which Receipt no 499 dated 27.10.2010 was issued to the complainant. It was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.

III. That further the complainants have paid an amount of Rs. 21,00,000/- which is not total consideration of the Plot. It is submitted that the said payments were not full and final payments and further payments inter alia towards government dues on account of EDC/IDC charges are payable at the time of allotment of plot and execution of plot buyer agreement.

IV. That further no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the authority which is within the knowledge of the complainants herein. It is submitted that as per averments made in the complaint, the complainants have claimed interest from the12.05.2014 which also shows that the amount claimed by the complainants have hopelessly barred by limitation.

V. That further it is submitted that no documents have been adduced by the complainants in support of their claim for the said date of offer of possession i.e., three years from the date of allotment and assuming without admitting, even if the date of possession is to be construed from three years of allotment of the plot i.e., by 12.05.2014 as averred by the complainant herein, the present complaint is hopelessly barred by limitation.

VI. There is no obligation on the part of the respondents to allot or handover any plot to the complainants since the complainants have failed to provide any evidence of execution of plot buyer's agreement in favour of the complainants.

VII. That further that the complainants were never interested in fulfilling the necessary formalities towards booking of the said plots. Neither the complainants have made any further payment for plot as such in ramprastha city nor did they submit any application for the same. It is apparent that the complainants never turned up for the completion of the formalities.

VIII. The complainants having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project of the respondent and the complainants have no intention of using the said plot for their personal use or residence of any of their family members and if the complainants had such intentions, they would not have invested in a project in which there was no certainty of the date of possession. The sole purpose of the complainants was to make profit from sale of the plot at a future date and now since the real estate market is in a desperate and non-speculative condition, the complainants have cleverly resorted to the present exit strategy to conveniently exit from the project by arm twisting the respondent. That it is submitted herein that the complainants having purely commercial motives have made investment in a futuristic project and therefore, they cannot be said to be genuine buyers of the said futuristic undecided plot and therefore, the

present complaint being not maintainable and must be dismissed in limine.

IX. It is further submitted that the complainants have intentionally, not filed their personal declarations with respect to the properties owned and/or bought/sold by them at the time of booking the impugned plot and/or during the intervening period till the date of filing of the complaint and hence an adverse inference ought to be drawn against the complainants.

X. That the complainants have approached the respondents' office in September, 2010 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.

XI. That even the sectoral 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 projectundertaken 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.

XII. That this is a case where the complainants have booked a plot admeasuring 300 Sq yards in the future potential project in "Ramprastha City" of the Respondent in the year 2010 against which a tentative registration was issued after a payment of Rs 21,00,000/- and it was also mentioned that a specific plot number shall be earmarked once the zoning plans have been approved by the concerned authorities. The complainants have been made

clear about the terms and conditions at the time of booking of the plot itself.

XIII. It is submitted that when the complainants had approached the respondent, it was made unequivocally clear to the complainants that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land; and ii) specific plot with preferred location can be demarcated only when the government releases the zoning plans applicable to the area Sector-92, 93 and 95, Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainants. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural plot of the respondent.

XIV. The below table shows the project name, its size and the current status of the project. It can be seen that the respondent has been diligent in completing its entire project and shall be completing the remaining projects in phased manner. The respondent has completed major projects mentioned below and has been able to provide occupancy to the allottees

S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received

3.	Edge Tower I, J, K, L, M Tower H, N Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G)	 400 160 80 640	 OC received OC received OC received OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

XV. However, since the complainants are short-term speculative investors, their only intention was to make a quick profit from the resale of the land and having failed to resell the said plot due to recession and set backs in the real estate world, have resorted to this litigation to grab profits in the form of interests. It is most strongly submitted herein that the complainants were never interested in the possession of the property for personal use but only had an intent to resell the property and by this, they clearly fall within the meaning of speculative investors.

XVI. 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.

XVII. 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 2010. The objections to the same were to be raised in a time bound manner. Hence, the complaint is not maintainable on the above-mentioned ground.

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 consideration of Rs. 21,00,000/- against the booked plot back in 2010 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 handover possession of the plot admeasuring 300 Square yards at Ramprastha City situated at Sector-37-D, Gurugram, Haryana to the complainants, completely developed as per the definition of 'external and internal development' as enshrined the provisions of section 2 in the said Act after obtaining the occupation certificate/completion certificate.

G.II Direct the respondent to pay the delayed possession penalty at the rate of 18% per annum on Rs. 21,00,000/- by the complainants to the respondent from due date of possession 12.05.2014 till the time the actual delivery of physical possession of the said plot after obtaining the occupation certificate/ completion certificate

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

20. The complainants have booked a plot admeasuring 300 sq. yards in the project of respondent named "Ramprastha City" located in Sector 37-D, Gurugram by making a payment of Rs.21,00,000/- vide receipt dated 27.10.2010. It was also specifically clarified that a specific plot shall only be earmarked once the zoning plans are approved.

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. 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 promoter has allotted a plot in its project vide preliminary allotment letter dated 12.05.2011. 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 12.05.2014.

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(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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 12.05.2014. However, despite receipt of Rs. 21,00,000/- against the booked plot back in 2010 except stamp duty and other charges payable to the government, the respondent-promoter has failed to enter into a written agreement for sale with respect to the same and has failed to handover possession of the subject plot to the 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. 12.05.2014 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/promoter is directed to allot a specific plot of 300 sq. yds in its project namely Ramprastha City, Sector- 92, 93 and 95, Gurugram and execute buyer's agreement within a period of 30 days.

ii. The respondent handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority

iii. The respondent/promoter is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 12.05.2014 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 12.05.2014 till the date of order by the authority shall be paid by the respondent/promoter to the complainants within a period of 90 days from date of this order and interest for every month of delay shall be paid by the

promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

v. The complainant is 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 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act

i. The respondent is 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