HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1335 of 2022**
Date of filing.:	**08.06.2022**
First date of hearing.:	**02.08.2022**
Date of decision.:	**02.11.2023**

M/s Hansalaya Properties
Third Floor, Hansalaya Building,
15, Barakhamba Road, New Delhi-11001 ....COMPLAINANT

VERSUS

Business Park Town Planners Limited
Regd Office: OT-14, 3rd Floor;
Next Door, Parklands, Sector-76,
Faridabad, Haryana-121004 ....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**

Nadim Akhtar **Member**

Present: - Mr. Kishan Rawat, Counsel for the complainant through VC
Mr. Hemant Saini, Counsel for the respondent.

ORDER (NADIM AKHTAR- MEMBER)

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

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Parklands, Phase- 1, Sector-76, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	LM1-3, admeasuirng 458 sq. yds
6.	Date of allotment of	04.06.2007

	plot	
7.	Date of builder buyer agreement	Not executed
8.	Due date of possession	Not mentioned 04.06.2010(Taken as a period of 3 years from date of allotment)
9.	Basic sale consideration	₹ 26,07,500/-
10.	Amount paid by complainant	₹ 24,85,566/-

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the complainant had applied for allotment of a plot in the project of the respondent namely "Parklands" situated at Sector-76, Faridabad, Haryana vide application dated 02.09.2005 for total sale consideration of ₹ 26,07,500/-. Vide letter dated 04.06.2007, complainant was allotted plot bearing no. LM1-3, admeasuring 350 sq. yds in the project in question. Thereafter, vide letter dated 03.08.2007, complainant was informed that the plot allotted to the complainant i.e LM1-3 is of 458 sq. yds instead of 350 sq. yds. For the increased area of 108 sq. yds, the respondent was seeking an additional amount of ₹10,14,341/-. Vide letter dated 04.08.2007, complainant requested the respondent to allot plot of size 350 sq. yds only. However, complainant did not receive any response from the respondent. Rather, respondent again

issued letter dated 11.09.2007 for payment of ₹ 10,14,341/-. As per various demands raised by the respondent, complainant has paid an amount of ₹ 24,85,566/- to the respondent. It is pertinent to mention that the respondent failed to provide a time period for delivery of possession of the booked unit.

4. That despite taking almost entire sale consideration, respondent failed to execute a plot buyer's agreement with the complainant or timely deliver possession. Respondent had rather arbitrarily issued a letter of termination/cancellation dated 08.07.2013 to the complainant with respect to the plot bearing no. LM1-3, Parklands, Phase -1, Faridabad. Vide letter dated 17.07.2013, complainant replied to the respondent regarding its request to allot a plot of size 350 sq. yds. Complainant had also made a further payment of ₹ 3,75,334/- to the respondent.

5. During the period 2013-2017, nothing further was communicated by the respondent to the complainant with respect to the status of handing over of plot in question. That without obtaining approval of zoning plan, respondent offered possession of plot in question to the complainant vide letter dated 04.05.2017. Vide said letter respondent also issued demand letter for an amount of ₹45,03,894/- which was inclusive of ₹ 24,04,648/- charged on account of interest for delayed payments. Vide letter dated 21.12.2020, respondent further raised a demand of ₹ 2,05,000/- towards stamp duty charges without obtaining approval of zoning plans. Since the

offer of possession was incomplete, complainant did not accept the same and waited for further information regarding status of approval of zoning plan.

6. Thereafter on 15.03.2021, respondent arbitrarily again issued letter for cancellation/termination to the complainant with regard to plot bearing no. LM1-3, Parklands, Phase-1, Faridabad. In view of the above cancellation, complainant sent a legal notice dated 07.07.2021 to the respondent to recall the termination notice and handover possession of the plot in question. However, the respondent failed to respond to the said notice of the complainant.

7. It is submitted by the complainant that the alleged offer of possession dated 04.05.2017 issued by the respondent to the complainant was not a legal offer of possession as the respondent had not obtained completion certificate. Said offer was incomplete and not valid as it was issued without obtaining occupation certificate/completion certificate from the competent Authority to show that the project is complete and habitable for living.

8. Respondent has caused an inordinate delay of more than 14 years in offering possession of the booked plot to the complainant without any valid justification. In the absence of execution of plot buyer agreement, respondent was under an obligation to handover possession of the booked plot within reasonable period. In terms of ratio of Fortune Infrastructure &

Anr Vs Trevor D'lima & Anr, a period of three years has been found a reasonable period for completion of project and delivery of possession. In present case, since the letter of allotment was issued on 04.06.2007, the reasonable period for handing over of possession would be 05.06.2010.

9. The act and conduct of the respondent is in complete contravention to the provisions of the RERA Act. Despite a lapse of more than 14 years from the date of allotment, respondent is still not in a position to deliver possession of the unit to the complainant. Further, respondent has erroneously allotted a plot of wrong size i.e 458 sq. yds instead of 350 sq. yds initially applied for by the complainant. The project is still incomplete and the respondent has yet to issue a legal and valid offer of possession to the complainant. Hence, the complainant is left with no other option but to approach the Authority seeking possession of the booked unit along with delay interest till the date a fresh offer of possession is issued to the complainant.

C. RELIEF SOUGHT

10. That the complainant seeks following relief and directions to the respondent:-

    i. Hold that the termination letter dated 15.3.2021, issued by the Respondent, with regard to Plot No. LM1-3, Parklands, Phase-

I, Faridabad, Haryana, to the Complainant is invalid and therefore not sustainable in law.

ii. Direct the Respondent to handover legal and valid possession of Complainant's Plot No. LM1-3, Parklands, Phase-I, Faridabad, Haryana within a reasonable period to the Complainant with -all approvals from the concerned departments / authorities, including the approved zoning plan;

iii. Award Delayed Possession Charges (DPC) to the Complainant by way of interest on the total admitted amount of Rs.24,85,566/-, to be calculated at the Prescribed rate per annum, from the date of deemed possession, i. e 05.6.2010 till realization. In terms of the ratio of Fortune Infrastructure & Anr. Vs Trevor D'Lima & Anr. (2018) 5 SCC 442, since the letter of allotment was issued on 04.6.2007, the reasonable period of 3 years for handing over possession would be 05.6.2010.

iv. Payment of Rs.5,00,000/- on account of harassment and mental agony and also on account of litigation cost since the Advocate of the Complainant have to travel from Delhi to Panchkula.

v. Any other relief that the Authority may deem fit.

11. During the course of arguments, learned counsel for the complainant further submitted before the Authority that the complainant in

this case had applied for a plot admeasuring 350 sq. yds in the project in question which was confirmed by the respondent vide letter dated 02.11.2006 by collecting EDC,IDC and PLC charges for a 350 sq. yds plot. Therefore, there was no variation in the area of the plot applied for and the area of the plot which confirmed and booked by the respondent. Respondent has wrongfully placed reliance on clause (e) of the booking form. The parties were always in consensus ad idem with respect to the area of the plot which was applied for by the complainant. It was only with the letter of allotment dated 04.06.2007 that the complainant came to know that the respondent had arbitrarily allotted a plot bearing no. LM1-3 having an area of 458 sq. yds instead of 350 sq. yds. Complainant wrote several letters to the respondent to correct the area of the plot, however, nothing was done. Learned counsel for the complainant further submitted that the respondent has raised an arbitrary demand of ₹ 10,14,341/- vide letter dated 03.08.2007 and intimidated threat of cancellation just to pressurize the complainant into accepting the plot of 458 sq. yds. In order to avoid cancellation, complainant had paid the demanded amount to the respondent. Further, respondent did not send any communication to the complainant with respect to the fact that there were no plots of 350 sq. yds available with the respondent. The complainant has already paid an amount of ₹ 24,85,566/- to the respondent towards booking of a plot in the project in question in the year 2008 itself. Despite waiting for more

than 14 years, the said plot has not been handed over. Though the respondent had issued an offer of possession to the complainant vide letter dated 04.05.2017, however, said offer of possession could not be called a valid offer as it was without obtaining approval of zoning plan and without any completion certificate. As is evident in said offer of possession wherein it has been specifically mentioned that the company has applied for approval of zoning plan of the plot which is still under consideration even in the year 2017. Also the letters of termination/cancellation issued by the respondent on the grounds of non payment of dues hold no weight since the respondent has failed to honour its obligation of timely delivery of possession of booked unit. Respondent has neither denied any of the payments made by the complainant nor refused any on grounds that there was a mistake in allotting the plot LM1-3 to the complainant. Rather respondent has retained a huge amount of ₹ 24,85,566/- since 2008. Respondent should have been honest with the complainant and taken proactive measures in the year 2008 itself when the respondent was unable to obtain approval of zoning plans. Now after a lapse of more than 14 years respondent cannot deny the complainant possession of the plot after wrongfully enriching itself on a paid amount of ₹ 24,85,566/-. It is an admitted case of the respondent that it does not have approved zoning plan of plot no. LM1-3 as has been mentioned in the "offer of possession" dated 04.05.2017. Further, in its reply, the respondent has not mentioned

anything about the completion certificate or about statutory approvals. Respondent has failed to mention or provide the current legal status of plot no. LM1-3 and has only denied possession to the complainant to cover up its lacunae.

12. Learned counsel for the complainant prayed that possession of the plot bearing no. LM1-3 be handed over to the complainant along with delay interest for the delay caused in delivery of possession till date as RERA Rules.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

13. Learned counsel for the respondent filed detailed reply in the matter pleading therein:

14. That the project in question was being developed by the respondent in the year 2008-2010. The complainant had approached the respondent to book a plot measuring 350 sq. yds in the project in the question. At the time of application of plot, it was agreed between the parties that if, in case, of any variation in the area of th plot available at the time of booking/allotment, allottee shall pay the excess amount if the area increases or refunded in case of shortfall. That it was agreed between the parties vide clause e of the application for provisional allotment/booking form dated 02.09.2005 that in case of non acceptance of such variation, the provisional allotment shall be treated cancelled.

15. On 04.06.2007, respondent allotted a residential plot bearing no. LM1-3 tentatively admeasuring 458 sq. yds to the complainant. Respondent raised each and every demand as per the payment plan opted by the complainant. However, it is the complainant who had failed to remit the said demands in a timely manner. Respondent issued various demand/reminder letters to the complainant from 2008 to 2012. However, complainant failed to make the requisite payment. Due to this, the respondent was constrained to issued termination cum intimation notice dated 08.07.2013 to the complainant.

16. However, on 04.05.2017, respondent gave an opportunity to the complainant to take possession of the plot by issuing an offer of possession to the complainant and simultaneously raising the demand towards the plot in question. However, the complainant failed to accept the said offer of possession. Constrained, respondent vide letter dated 27.07.2017, requested the complainant to clear outstanding amount as per offer of possession so as to enable the respondent for handing over of possession and execution of conveyance deed. Since the complainant deliberately chose not to remit the demand of offer of possession, the respondent was yet again constrained to issue termination cum intimation letter dated 15.03.2021.

17. That the complainant made huge defaults in making timely payments of called amount. It is submitted that the interest charged from

the complainant was as per the agreed terms. That after May 2008, complainant has failed to make further payment towards the booked plot.

18. It is imperative to mention that the complainant time and again vide letter dated 03.08.2007, 11.09.2007, 18.01.2008 and 30.04.2008 has expressed its displeasure and has further denied to accept the allotment of plot admeasuring 458 sq. yds. Vide letter dated 18.01.2008, complainant had also refused to make payment on the pretext of increase in plot area from 350 sq. yds to 458 sq. yds.

19. The project in question has been marred with serious defaults and delays. Construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in **M.C Mehta v. Union of India**, ban by Environment Pollution (Prevention and Control) Authority etc. Further, the construction of the project had been marred by the COVID-19 pandemic whereby the government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondents which continued upto the year 2021. That due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondents, the construction got delayed.

20. Mr. Hemant Saini, learned counsel for the respondent further argued that the complainant in this case had approached the respondent to book a plot having an area of 350 sq. yds. vide application form dated 02.09.2005. Since the time of booking, the complainant was duly informed that the area of the plot was tentative and subject to variation. Accordingly, complainant was allotted plot bearing no. LM1-3 having an area of 458 sq. yds, However, said area of plot was unacceptable to the complainant since the beginning. Since at the time of allotment, there was no availability of a plot admeasuring 350 sq. yds, the complainant was duly allotted a plot having an area of 458 sq. yds. At the time of booking, complainant was apprised that the provisional registration is for a future project and the size of the plots is tentative. Even thereafter, complainant agitated the allotment of plot LM1-3 with the respondent. Whereas the respondent raised according to the allotted plot. Due to this variation, complainant chose not to enter into any Plot Buyer Agreement with respect to the plot in question with the respondent. The complainant and the respondent had not arrived at any agreement with respect to the purchase of the plot. There was no consensus ad idem i.e. meeting of minds between the parties at any point of time. It is submitted that a meeting of the minds or agreement, is a required element in order for a contract to be enforceable. So, all terms of the offer must be accepted or there is no consensus ad idem and there is, because of that, no contract. It

is settled law that where there is no valid and enforceable contract being made the court will not make a contract for the parties. For this reliance is placed on **Smt. Mayawanti vs Smt. Kaushalaya Devi**, 1990 (3). In present complaint, complainant is seeking relief in nature of specific performance which is not possible.

21. That throughout the years after issuing the letter of allotment, respondent had proceeded with the booking of the complainant for a plot having an area of 458 sq yds only. However, since the complainant was not interested in seeking possession of a unit having area above 350 sq yds. Complainant stopped making further payments in respect of the plot. Respondent had time and again issued several reminder letters to the complainant to make payment of outstanding amount but the complainant deliberately defaulted in making said payments. Constrained respondent had to cancel the allotment of the complainant vide letter dated 08.07.2013. The respondent being a customer-centric organisation, had on 04.05.2017, issued an offer of possession letter to the complainant and simultaneously raised the demand towards plot no. LM1-3, giving an opportunity to the complainant to avail possession of the plot in question. However, the complainant did not pay heed to the same and again chose not to make payments towards booking of the plot in the project in question. Constrained by which the respondent, vide its letter dated 27.07.2017, requested the complainant to clear the outstanding as per the

offer dated 04.05.2017 so as to enable the respondent to proceed for No Objection Certificate for fit out and execution of conveyance deed. Since the complainant deliberately chose not to remit the demand and failed to accept the said offer of possession, the respondent was yet again constrained to issue termination-cum-intimation letter dated 15.03.2021.

22. Learned counsel for the respondent further submitted that the complainant vide its letter(s) dated 03.08.2007, 11.09.2007, 18.01.2008 and 30.04.2008 respectively had expressed its displeasure as well as had flatly denied to accept the allotment of plot admeasuring 458 Sq. Yds. made by the respondent in favour of the complainant. Hence, the complainant is not entitled to seek relief of possession of the plot in question. The complainant is only entitled to receive refund of the paid amount along with interest after deduction of earnest money on account of failure to adhere to schedule of payments. Moreover, it was also agreed by the complainant that if in case of non-acceptance of variation in the size of allotted plot, the provisional allotment shall be treated as cancelled. In the absence of any agreement, the only terms that subsist between the parties are that of the provisional booking form and that alone will govern the relationship between the parties. Since the stage of execution of plot buyer agreement was never reached between the parties, there is no case for delivery of possession, only refund can be allowed at this stage. In the present case there was no contract between the parties as the parties were

not ad-idem. Moreover, the present complaint is barred by limitation. The complainant herein seeks interalia delayed possession compensation of plot in question after 5 years of issuance of offer of possession dated 04.05.2017, with no regard to the procedural laws which under no circumstances, can be entertained. In such a circumstance, this exorbitant delay cannot go unnoticed and the present complaint is bound to be dismissed. This aspect of limitation has been dealt by **Maharashtra RERA in 'Manasi Narasimhan and others vs Larsen and Turbo Limited** (MANU/RR/0095/2020, decided on 18.08.2021)' and **HRERA Gurugram in complaint case no. 242/2018** dated 05.09.2018 wherein it was observed by Ld. HRERA Authority that when a complaint was filed after more than three years from the date of cause of action then the same is not maintainable being barred by limitation.

23. Since the complainant failed to make payment of outstanding amount, respondent had no choice but to cancel the allotment of the complainant. Learned counsel for the respondent placed reliance upon judgement passed by Hon'ble High Court in **Desh Raj Vs. Rohtash Singh, Civil Appeal No.921 of 2022:** decided on 14.12.2022, in which the Hon'ble Supreme Court has held that where there was clear intention of the parties to treat time as essence of the contract and where there was undue delay on behalf of the respondent to institute the suit, the relief of Specific Performance cannot be granted. It was further held by the

Hon'ble Supreme court that in cases where time was the essence of the contract, non-performance of contractual obligation on part of the vendee within the stipulated time, resulted in lawful termination by the vendee. In the present case, the complainant has waited for 5 years to file claim for the plot in question, clearly, on the face of it, attracted by the rising prices. Furthermore, parties were not *ad-idem* and no agreement was executed till date, and the plot stood terminated since the year 2017.

E. ISSUES FOR ADJUDICATION

24. (i) Whether the Authority has jurisdiction to entertain the present complaint?

(ii) Whether the Complainant is entitled to the reliefs claimed by it particularly possession alongwith delay interest?

F. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:.

25. Respondent has raised an objection that the Authority does not have jurisdiction to decide the complaint on following grounds:-

(i) Present complaint is barred by Limitation as complaint has been filed after 5 years of cause of action which is issuance of offer of possession dated 04.05.2017.

(ii) That there was no consensus ad idem i.e. meeting of minds between the parties at any point of time for plot having size of 458 sq ft. and meeting of the minds or agreement, is a required element in order for a terms of contract to be enforceable.

(iii) Reliefs sought by the complainants are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum.

With respect to the objection of respondent that the complaint is barred by limitation, the reference is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise**.

The promoter in the present complaint has till date failed to fulfil his obligation pertaining to delivery of possession of plot in question because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

Furthermore, respondent has placed reliance upon judgement passed by Maharashtra RERA in complaint no. CC006000000171836 titled as Manasi Narasimhan and Anr. Vs Larsen and Tourbo Ltd. It is

pertinent to mention here that facts of referred case and present case differ to an extent that observations/findings cannot be opted in this case. Para 9 of the judgement is reproduced below for reference:-

"Thus, while section 18 does not spell out a limitation period, the section has an inbuilt limitation as it does not provide for raising and addressing grievances which are known today, in the future. Hence, this Authority is constrained to rule that any grievance of delayed possession must be raised either before or on date of possession and not on any future date chosen by the allottees. Any grievances raised later on account of delayed possession would clearly be estopped by section 18. If this section was not self-limiting no real estate project or commercial del would ever see a financial closure. If known defaults can be used to seek compensation at any time in the future would mean that the developer would never be able to assess the true cost of the said project making real estate ventures extremely risky. The spirit of this enactment is to bring finality and settlement in a time bound manner. In this complaint the possession was taken on 04.03.2019 while the complaint was filed on 11.12.2019 i.e. almost 9 months later. At the time of possession, the fact of delay was known to both the parties, but the complainants choose no to raise it then. Thus, a grievance that was waived and or acquiesced by the complainants at the time of possession cannot be raised later just to reap some benefits."

In the present complaint, stage of possession or final settlement has not been reached. Complainant had filed complain for seeking relief of valid offer of possession which has not yet been delivered by respondent. So,

objection raised by respondent on ground of limitation does not any merit and is therefore rejected.

Another objection raised by the respondent is that there was no consensus-ad idem (meeting of minds) between the parties for plot having size of 458 sq yds and in particular no agreement got executed between parties due to difference/variation in size of plot. Herein it is pertinent to mention here that the on one hand it is the stand of respondent that complainant has deliberately concealed from this Authority that the complainant vide clause (e) of application for provisional allotment/booking form dated 02.09.2005 with all conscious mind had agreed that in case, of any variation in the area of plot available at the time of booking/allotment, the allotee shall pay the excess if the area increases. Moreover, it was also agreed by the complainant that if in case of non-acceptance of such variation the provisional allotment shall be treated as cancelled. On the other hand, it is the argument of respondent that complainant and respondent never had meeting of minds for plot having size of 458 sq yds. Facts of the case reveal that complainant applied for booking of plot having size of 350 sq yds in year 2005 and on acceptance of booking amount, respondent allotted plot no. LM-1-3 to complainant. Thereafter, respondent vide letter dated 03.08.2007 informed the complainant that plot allotted is of size 458 sq yds instead of 350 sq yds. Complainant objected to said increase in area vide letter dated

04.08.2007 and requested the respondent to allot plot having area of 350 sq yds. But respondent raised demand of around Rs 10,14,341/- for increased area of plot having area 458 sq yds. Be as it may be, offer of possession alongwith statement of account which was issued by respondent in year 2017 pertains to plot no. LM-1-3 having area of 458 sq yds. Said offer is disputed by complainant and not the area of plot in particular. Even the complainant in the relief sought has only sought possession of plot no. LM-1-3 not mentioned any area with it. As such admittedly no plot of 350 sq yds in available with respondent in the project in question. Further, perusal of reply reveals that a letter dated 30.04.2008 was written by complainant which is annexed at page no. 60 wherein complainant had accepted the area 458 sq yds and duly made payment of Rs 10,14,341/-. Content of said letter is reproduced below for reference:-

Enclosed please find herewith cheque no. 574042 dt 25.04.2008 drawn on ABN Amro Bank New Delhi for Rs 10,14,341/- being out plt size converted to 350 sq yds to 458 sq yds. Now we are making the payment 458 sq yds plot size which please note. Kindly acknowledge the receipt and issue us the official receipt at the earliest.

Said letter clearly establishes the fact that complainant had accepted the plot with area of 458 sq yds and made payment towards acceptance of it. It implies that parties had meeting of minds in year 2008 upon a plot of

458 sq yds. No doubt that proper formal agreement was not executed between the parties but by way of allotment letter, the respondent had accepted the money from complainant for allotting a specific plot in its real estate project and the parties had been acting in relationship of allotee and promoter. In support, definition of allotee, promoter and real estate project is referred. As per S.2(d) of the RERA Act, "allottee" is defined as follows:

> *(d) "allottee" in relation to a real estate project, means the person to whom a plot apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given. on rent:*

Definition of "promoter" under section 2(zk) is provided below:

> *(zk) "promoter" means,—*
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

Further, as per Section 2(zj) & (zn) of the RERA Act,2016. "project" & "real estate project" are defined respectively as follows:

> *(zj) "project" means the real estate project as defined in clause (zn):*
> *(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing*

building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

A conjoint reading of the above sections shows that respondent-BPTP is a promoter in respect of allottees of units/plots sold by it in its real estate project-Parklands and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainants and respondent is established and the issues/transaction pertains to the real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real

estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. So, the issues involved in complaint and relief sought are well within the ambit of the Authority. Plea of respondent raised in written arguments is that reliefs sought are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum does not have merit even on the ground that Section 79 of RERA Act exclusively bars the jurisdiction of civil courts with respect to any matter which is the subject matter (real estate transaction) under the Act and falls within the purview of the Authority, or the Real Estate Appellate Tribunal. Accordingly, the objections raised by respondent on ground of maintainability which are mentioned in para 23 clause (i), (ii) and (iii) of this order stands dealt with and are declared devoid of merit.

26. Factual matrix of the case is that complainant had booked a unit in the project of the respondent on 02.09.2005. Vide letter dated 04.06.2007, complainant was allotted plot bearing no. LM1-3 in the project. It is pertinent to mention that both parties failed to enter into a plot buyer agreement. In the absence of a plot buyer agreement it is difficult to

determine a proper date for delivery of possession, Authority cannot rightly ascertain as to when the possession of said unit was due to be given to the complainant. In these circumstances, reliance is placed upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. In present complaint, complainant was allotted a specific unit vide allotment letter dated 04.06.2007. Therefore, taking a period of three years from the date of allotment, the period of three years expires on 04.06.2010. Thus, possession of the unit should have been delivered to the complainant on 04.06.2010. Therefore, the deemed date of delivery of possession works out to 04.06.2010.

27. As per observations recorded in aforementioned paragraph, the due date of possession in the present case works out to 04.06.2010, therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not. The obligation to deliver possession within a period of 3 years from the date of allotment was not fulfilled by respondent. There is

delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

28. Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2010 and the NGT order referred by the respondent pertains to year 2016, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

> "69.*The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-*

performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself."

So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

29. Admittedly the complainant in the present case had opted for a plot having an area of 350 sq. yds at the time of booking. However, vide allotment letter dated 04.06.2007, complainant was allotted plot bearing no. LM1-3 having an area of 458 sq yds. Through various letters dated 03.08.2007,11.09.2007 and 18.01.2008 complainant agitated the allotment of the plot in question on ground that the complainant had opted for a plot admeasuring 350 sq. yds. It is the response of the respondent that the complainant had made a booking in a future project and the size of the plot was tentative, which was to be finalised only at the time of booking. The complainant had made a payment of

₹ 24,85,516/- towards total sale consideration of ₹ 26,07,500/- by the year 2008 itself. Thereafter, the complainant had raised objections to the subsequent demands raised by the respondent towards plot admeasuring 458 sq. yds and had time and again requested the respondent to allot a plot of 350 sq. yds. It is the submission of the respondent that there is no availability of a plot having an area of 350 sq yds. Respondent on account of delay in making payments had terminated the allotment of the complainant vide letter dated 08.07.2013, but they failed to return the money deposited with them. The allotment of the complainant was later revived after the respondent had issued an offer of possession to the complainant on 04.05.2017 for the plot in question. The complainant did not accept the said offer of possession for the reason that respondent did not have proper approvals and had not obtained completion certificate for the plot in question. Thereafter, the allotment in favour of the complainant was again terminated by the respondent vide letter dated 15.03.2021 on account of non payment of dues. Again, the respondent failed to return the amount deposited by the complainant. It is pertinent to note that the respondent in its reply/oral submissions has failed to apprise the Authority with regard to the current status of the plot in question, as to whether part completion certificate has been obtained or not.

30. Further, it is observed that the possession of the unit should have been delivered to the respondent by 04.06.2010 i.e. 3 years from date of

allotment as stated in aforesaid paragraph no. 18. However, an offer of possession was issued to the respondent after a lapse of nearly seven years vide letter dated 04.05.2017. Vide said letter respondent also issued a demand letter for an amount of ₹ 45,03,894/- which was inclusive of ₹ 24,04,648/- charged on account of interest on delayed payments. It is noteworthy to observe that in said offer of possession it has been admitted to by the respondent that the respondent company has applied for approval of zoning plan which are yet to be received. Further the respondent has failed to mention anything with regard to receipt of completion certificate to ascertain the fact that the plot is complete and ready for habitation. At the time of booking, the total sale price of the plot with area of 350 sq yd was fixed at ₹ 26,07,500/- (at rate of Rs 7450 per sq yds as per application for provisional registration of plot annexed at pg 50 of complaint), out of which the complainant had already paid an amount of ₹ 24,85,566/- in the year 2008 itself. Further, statement of account dated 21.12.2020 reveals that for plot having area of 458 sq yds the basic sale price is Rs 34,12,100/- and Total sale price is Rs 52,15,020/- except the stamp duty charges. Vide said statement of account, it is established that respondent had raised demand of Rs 29,85,487/- on account of interest on delayed payments and Rs 1,16,823/- on account of holding charges. No justification/documentary evidence for these charges is provided in impugned offer of possession or written

statement. In these circumstances, respondent could not have raised a huge demand ₹ 45,03,894/- from the complainant. It was the respondent who had delayed the delivery of possession and the complainant should not be burdened on account of failure of the respondent in timely delivery of possession. Since the offer of possession dated 04.05.2017 was without obtaining proper approvals from competent authority and without completion certificate, as also it burdened the complainant with an unreasonable demand, said offer of possession cannot be called a valid offer of possession. Complainant could not have accepted the offer of possession dated 04.05.2017. Therefore, the offer of possession dated 04.05.2017 is not a valid offer of possession as per the principles laid down by the Authority in Complaint no. 903 of 2019 titled Sandeep Goyal Vs Omaxe Pvt Ltd.

31. Now, the main point of contention between both the parties is with regards to size of the allotted plot in question. It is an admitted fact that at the time of booking complainant had opted for a plot having an area of 350 sq yds. However, at the time of allotment the size of the plot was increased to 458 sq yds and the complainant was allotted the plot in question bearing no. LM1-3. Through several representations 03.08.2007, 11.09.2007 and 18.01.2008 placed on record at pg no. 59, 60 and 63 of complaint respectively, it is clear that the complainant had agitated the allotment of a plot having an area which was more than the size opted by

the complainant at the time of booking. Complainant had duly requested the respondent to allot a plot of correct size. But respondent on its part had failed to properly address the grievance of the complainant and had arbitrarily proceeded with the allotment of plot having an area of 458 sq yds. on the ground that the size mentioned at the time of booking were tentative and bound to variation, which had also been agreed between the parties in clause (e) of the booking form. Left with no other option, complainant accepted the plot having area of 458 sq yds vide letter dated 30.04.2008 attached at pg 61 of reply and continued to make payment towards booking in the project of the respondent. Complainant had made a total payment of ₹ 24,85,566/- till the year 2008 that is after the allotment of plot in question. Learned counsel for the respondent has argued that complainant was not interested in taking possession of the plot having an area of 458 sq. yds and for that reason complainant had stopped making further payments. A bare perusal of the receipts of payments made by the complainant would show that the complainant had made payment of ₹ 10,14,341/- to the respondent on 02.05.2008 in compliance of the demand letter issued by the respondent on 03.08.2007 which clearly shows the intent of the complainant to continue with the project-plot having area of 458 sq yds. Cheque of amount of Rs 10,14,341/- was enclosed alongwith letter dated 30.04.2008 whereby complainant had accepted the increased area. In case there was a dispute

between the parties with regard to the allotment of plot in question, respondent should not have accepted the further payments and begun the process of cancelling the allotment of the complainant on account of mutual disagreement. Neither the respondent denied the further payments nor changed the plot allotted to the complainant. During the course of hearing, learned counsel for the respondent has submitted that there is no plot having an area of 350 sq yds available at the site of the project.

32. The facts set out in the preceding paragraph demonstrate that though initially there was a disagreement between the parties with regard to the size of the allotted plot wherein the complainant had agitated the allotment of plot having an area of 458 sq. yds however, the disagreement was never acted upon between the parties. Neither the respondent cancelled the allotment in favour of the complainant nor the complainant chose to withdraw from the project. Infact complainant accepted the increased area and thereafter, parties mutually proceeded with the allotment of plot bearing no. LM1-3 having area of 458 sq yds. Further the complainant vide present complaint is seeking possession of the plot bearing no. LM1-3 and had already made payment of Rs 10,14,341/- towards the increased area.

33. As per observations laid down in preceding paragraphs, possession of the unit should have been delivered to the complainant by 04.06.2010. However, the possession of the plot had been inordinately delayed by the

respondent. In the meantime, respondent had issued a letter of termination to the complainant on 08.07.2013 on account of delay in making payments. Said letter of termination holds no weight as respondent itself had failed to initiate the process of termination of allotment in favour of the complainant. Evenmore, the alleged termination became null and void in view of the offer of possession dated 04.05.2017. As already observed, said offer of possession was not a valid offer and complainant could not have been forced to accept the said offer of possession as it was issued without obtaining proper approvals from the concerned Authority/ completion certificate and accompanied with unreasonable demand of Rs 45,03,894/-. When the complainant did not accept the same, respondent again arbitrarily cancelled the allotment of the complainant vide letter dated 15.03.2021. However, once more the respondent chose not to follow through with the cancellation but rather retained the amount paid by the complainant for more than 14 years. The stand of the respondent is that the complainant has no claim on the plot in question as the same has been cancelled. After going through the facts and submissions, Authority is of the view that in present complaint, respondent has acted in a high handed, arbitrary and unjustified manner in its conduct with the allotment of the complainant. Respondent has wrongfully utilised the huge amount deposited by the complainant and has diminished the interest of the complainant by issuing a letter of cancellation. Fact of the matter is that

the respondent deliberately chose not to process the termination of the allotment of the complainant and let it linger on to utilise the paid amount. In case the complainant had been a defaulter, respondent should have immediately cancelled the allotment or taken action as per applicable clause. Respondent did no such thing. The allotment of the plot still stands in the name of the complainant and amount is still lying with respondent. Moreover, the allotment of plot was cancelled on the basis of non-acceptance of offer of possession of 2017 by not making payment in lieu of it. Said basis itself has been declared void in the aforesaid paragraphs. As of today, the respondent has failed to provide current status of the plot in question and whether it is in possession of requisite documents to legally hand over the possession of the plot in the name of the complainant or not. In such circumstances, it appears that the respondent is deliberately trying to evade from its liabilities with regard to the allotment of the complainant by contending that the complainant was not agreeable to the size of the plot when in fact the respondent is still not in position to issue a valid offer of possession.

34. The complainant in present complaint wishes to continue with the project. Since throughout its submissions, respondent has chose to stay silent in respect of the current status of the plot in question, it can be presumed that the respondent is not in position to issue a valid offer of possession. A delay of more than 13 years has already been caused in

delivery of possession. This fact of inordinate delay having been caused entitles the complainant to receive upfront payment of delay interest from deemed date of possession till date of this order and further monthly interest till the date a valid offer of possession duly supported with completion certificate/part completion certificate is issued to the complainant qua the plot in question. Therefore, the Authority deems fit to direct the respondent to pay delay interest to the complainant on account of delay caused in delivery of possession from deemed date of possession till a fresh offer of possession is issued after obtaining completion certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

35. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

> ***"Rule 15:*** *"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 Iindia 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"*

36. Consequently, as per website of the state Bank of India i.e. https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 02.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

37. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from from the deemed date of possession i.e 04.06.2010 till date of this order i.e 02.11.2023 and further monthly

interest from 03.11.2023 till a valid offer of possession is paid to the complainant.

38. Authority has got calculated the interest on total paid amount from the deemed date of possession i.e 04.06.2010 till date of this order i.e 02.11.2023 which works out to ₹ 35,87,046/- and further monthly interest of ₹ 21,962/- from 03.11.2023 as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.11.2023 (in ₹)
1.	24,85,566/-	04.06.2010	35,87,046/-
Total:	24,85,566/-		35,87,046/-
Monthly Interest:	24,85,566/-		21,962/-

39. The complainant is seeking compensation to the tune of ₹ 5,00,000/- on account of mental agony and harassment and also on account of litigation cost. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvT Ltd. V/s State of U.P. & ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged

by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent shall issue an offer of possession to the complainant within a period of one month from the date of receipt of completion certificate. Said offer of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest admissible to the complainant on account of delay caused in delivery of possession.

(ii) Respondent is directed to pay upfront delay interest of ₹35,87,046/- (till date of order i.e 02.11.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further

monthly interest @ ₹ 21,962/- (admissible from 03.11.2023 till the date of offer of possession after receipt of completion certificate).

(iii) Complainant is directed to accept the offer of possession issued by the respondent and take physical possession within a period of two months from said date. Complainant will remain liable to pay the balance consideration amount to the respondent at the time of possession offered to them.

(iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

.....
DR. GEETA RATHEE SINGH
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]