



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

|                         |              |
|-------------------------|--------------|
| Complaint no.:          | 1885 of 2022 |
| Date of filing.:        | 04.08.2022   |
| First date of hearing.: | 20.09.2022   |
| Date of decision.:      | 21.11.2023   |

## 1. COMPLAINT NO. 1885 OF 2022

Ms. Manju Verma D/o Sh. Tilak Raj Gulati  
R/o 83, Sidhartha Enclave  
New Delhi 110014

....COMPLAINANT

VERSUS

M/s BPTP Ltd.  
Having registered office address at:  
M-11, Middle Circle, Connaught Circus,  
New Delhi -110001

....RESPONDENT

## 2. COMPLAINT NO. 1886 OF 2022

Ms. Manju Verma D/o Sh. Tilak Raj Gulati  
R/o 83, Sidhartha Enclave  
New Delhi 110014

....COMPLAINANT

VERSUS

M/s BPTP Ltd.  
Having registered office address at:  
M-11, Middle Circle, Connaught Circus,

New Delhi -110001

....RESPONDENT

**3. COMPLAINT NO. 1887 OF 2022**

Ms. Manju Verma D/o Sh. Tilak Raj Gulati  
R/o 83, Sidhartha Enclave  
New Delhi 110014

....COMPLAINANT

VERSUS

M/s BPTP Ltd.  
Having registered office address at:  
M-11, Middle Circle, Connaught Circus,  
New Delhi -110001

....RESPONDENT

**4. COMPLAINT NO. 1888 OF 2022**

Ms. Manju Verma D/o Sh. Tilak Raj Gulati  
R/o 83, Sidhartha Enclave  
New Delhi 110014

....COMPLAINANT

VERSUS

M/s BPTP Ltd.  
Having registered office address at:  
M-11, Middle Circle, Connaught Circus,  
New Delhi -110001

....RESPONDENT

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

**Nadim Akhtar Member**

**Present: -** Mr. Shalabh Gupta, Counsel for the complainant  
through VC  
Mr. Hemant Saini, Counsel for the respondent.

**ORDER (NADIM AKHTAR- MEMBER)**

1. Captioned complaints are taken up together for hearing as they involve the same issues pertaining to the same project of respondent and against the



same respondent only. This order shall dispose off this bunch of four captioned complaints taking complaint no. 1885 of 2022 titled as Manju Verma vs M/s BPTP Limited as lead case.

2. 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

#### A. UNIT AND PROJECT RELATED DETAILS

3. 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 Pride, Sector-76, Faridabad.                    |
| 2.    | Nature of the project.         | Plotted   |
| 4.    | RERA Registered/not registered | Not Registered  |
| 5.    | Details of unit.               | Plot No. 12A, Block W2, Phase III, measuring 250 sq. yds. |



|     |                                 |                |
|-----|---------------------------------|----------------|
| 6.  | Date of allotment               | 11.05.2007     |
| 7.  | Date of builder buyer agreement | 14.09.2007     |
| 8.  | Due date of possession          | 14.09.2010     |
| 9.  | Basic sale consideration        | Rs 21,25,000/- |
| 10. | Amount paid by complainant      | Rs 25,78,200/- |
| 11. | Offer of possession             | 27.09.2008     |
| 12. | Part Completion Certificate     | 09.09.2010     |
| 13. | Date of Termination             | 15.06.2015     |

#### **B. FACTS AS STATED IN THE COMPLAINT**

4. Facts of complaint are that the complainant had applied for booking of a plot in the project of the respondent namely; "Parklands" situated at Sector-76, Faridabad, Haryana by paying booking amount of Rs 5,00,000/- on 25.01.2006. Following which allotment of plot bearing no. 13, Block W2, Phase III having an area of 250 sq. yds was issued by respondent in favor of complainant in the project in question on 11.05.2007. The basic sale price of the plot was fixed at ₹ 21,25,000/-. Plot Buyer Agreement qua the said plot was executed between both the parties on 14.09.2007. As per clause 22.1 of the agreement, possession of the unit was to be delivered



within a period of 24 months from the date of sanction of service plans. That as per the demands raised by the respondent, the complainant had made payment to the tune of Rs 25,78,200/- towards the sale consideration of the plot in question.

5. It is alleged that the respondent had unilaterally changed the booking of the allotted plot from W2-13 to a new plot bearing no. Plot No. W2-12A, without any justification for the same. A maintenance and service agreement was executed between the complainant and the respondent on 21.01.2009 which is annexed at page no. 69 of complaint file.
6. The respondent made various representations to the complainant stating that the project is progressing well and the possession will be handed over shortly. However, despite a lapse of more than 16 years from the booking, respondent is not in a position to deliver possession of the booked plot.
7. It is further alleged that the respondent claimed various illegal amounts in respect of the plot bearing no. W2-12 A, under the head of club membership charges, conveyance deed charges, electrification and STP charges, enhanced external development charges, interest payable, stamp duty charges. These charges have not been mentioned in the plot buyer agreement dated 14.09.2007 executed between the parties. Hence, the respondent could not have charged these from the complainant.
8. Complainant requested the respondents several times to raise concern with respect to the plot in question but received no response. That the



complainant visited the office of the respondent company in the month of May 2022 to enquire about the possession but was shocked to find out that the respondent had cancelled the allotment of the complainant. However, complainant was never issued any letter of intimation/cancellation neither the respondent had returned the amount paid by the complainant.

9. The respondent has miserably failed to deliver a valid possession to the complainant within the time frame promised as per the plot buyers agreement and has rather illegally cancelled the allotment of the complainant without any justification for the same. 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. To direct the respondents to handover possession of the plot in question to the complainant, complete in all respects, with delay penalty at the prescribed rate, to be calculated from the promised date of possession, i.e, 15.09.2009 till the actual handing over of possession of the plot to the complainant.



- ii. To restrain the respondent from raising any fresh demand with respect to the project.
  - iii. To direct the respondents to set aside the cancellation of the plot and any order/letter/notice etc. that may have been issued by the respondent regarding cancellation of the plot of the complainant being illegal.
  - iv. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.
11. During the course of arguments, learned counsel for the complainant reiterated his averments as mentioned in the complaint file. He further submitted that the complainant in this case is a non resident Indian citizen who has been living in the United States of America for the past several years. The complainant time and again tried to get in touch with the respondent company and upon every trip to India visited the offices as well. Each and every time the complainant was assured that the possession of the plot will be delivered to her. However, upon her visit in the month of May 2022, she was orally informed that her allotment for the plot in question has been cancelled. He insisted that the complainant was never served upon the letter of intimation/cancellation till date. Complainant had already paid an amount of Rs 25,78,200/- more than the basic sale price of Rs 21,25,000/- in the year 2008 itself. Therefore, the respondent has



illegally cancelled the allotment of the complainant on frivolous grounds of non payment of dues. Further even if the respondent had cancelled the allotment of the complainant on alleged grounds of non payment of dues, then as per clause of the plot buyer agreement respondent should have arranged for resale of the plot and refund the amount paid by the complainant after forfeiture of earnest money. Rather the respondent chose to utilise the amount paid by the complainant for more than 15 years and is now refusing to fulfil its part of the obligation to deliver the possession of the booked unit.

12. Learned counsel for the complainant submitted that the respondent is still not in a position to deliver valid possession of the plot in question as it has yet to obtain completion certificate for the same. Complainant is only interested in taking possession of the booked plot. Therefore, he prayed that direction be issued to the respondent to deliver possession of the booked plot along with delay interest for the delay caused in delivery of possession. Also the respondent be directed not to raise any demand which is in contravention to the plot buyer agreement dated 14.09.2007.
13. It is pertinent to mention that during the course of hearing dated 11.09.2023, learned counsel for the complainant had submitted that the demand/reminder letters including the letter of termination of the unit dated 15.06.2015 issued by the respondent were not served upon the complainant as there is no postal receipt attached with them. Also that





even after cancelling the allotment of the complainant, the complainant was being issued fresh demand letters even till present year upon her visit to the office of the respondent company. Upon perusal of record, it was observed that complainant had not placed on record the demand letters issued to her in the year 2017, 2018 , 2019, i.e, post the alleged date of termination of plot on 15.06.2015. Therefore, complainant sought time to file the same. However, in response complainant has submitted an affidavit in the registry dated 10.10.2023 stating that she is unable to trace out the communications, letters email made by her to the respondent at this stage as said documents are lying at her residence abroad. Further she has attached invoice issued by the maintenance agency dated 21.01.2013, 13.05.2015, 24.04.2019 and photocopies of her passport showing the stamp of her visit.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

14. Learned counsel for the respondent filed detailed reply in the matter pleading therein:
15. That the captioned complaint relates to the project which is not registered with HRERA as the completion certificate/occupancy certificate of the project was obtained by the respondents on 09.09.2010 before the inception of HRERA. Any project for which completion or occupancy



certificate has been applied or already obtained before the applicability of the Act and Rules are beyond the purview of the RERA Act,2016.

16. That the complaint is barred by limitation as offer of possession was made on 20.10.2008 to the complainant.
17. The project in question was being developed by the respondent in the year 2006-2010. On 25.11.2006, the complainant approached the respondents for booking of a plot in the project 'Parklands' being developed by the respondent in Faridabad. Respondent vide allotment letter dated 11.05.2007 allotted plot bearing no. W2-13 to the complainant admeasuring 250 sq yds. Thereafter vide an undertaking cum affidavit dated 18.06.2007, the complainant had showed its acceptance for alternate plots subject to modification in the layout plan under consideration from the appropriate Authority. A plot buyer agreement dated 14.09.2007 was executed between the parties wherein plot bearing no. W2-12A was allotted to the complainant. That as per clause 22.1 of the agreement, possession of the unit was to be delivered within a period of 24 months from sanctioning of service plans of entire colony, subject to force majeure conditions. Service plan for the entire colony was sanction on 21.02.2014, hence possession of the plot was to be handed over by 21.03.2016. That after completion of entire development works, the respondent is in receipt of completion certificate for the plot on 09.09.2010. The respondent had duly issued Offer of possession of the



plot in question to the complainant on 27.09.2008. After receiving said offer of possession, the complainant had signed the "No Objection Certificate" dated 11.11.2009 for taking the physical possession of the plot. It is submitted that the complainant was herself not interested in taking the physical possession of the plot whereof till today despite of numerous reminders and final demand letter the complainant has not cleared its outstanding towards the respondent.

18. The complainant herself had failed to clear her arrears as well as the lawful demands raised by respondents and to take physical possession of the plot. Constrained by the defaults of the complainant in clearing the outstanding, the respondent had on several occasions issued reminder letters and final demand notice to the complainant however, all went in vain. Despite being aware of the fact that in terms of Clause 12 of the plot buyer agreement, timely payment was the essence of the contract, the complainant intentionally failed to remit the called instalment within the stipulated time period. Constrained thereof, the respondent terminated the booking on 15.06.2015.
19. Thus, the complainant being the habitual defaulter failed to comply with her obligation(s)/ duties casted under Section 19(6), 19(7) and 19(10) of the Real Estate (Regulation and Development) Act, 2016. Since the complainant failed to remit the payment qua the demand, the respondent was constrained to issue final demand letters and reminder notice on 13



occasions i.e. 30.05.2012, 29.10.2012, 14.12.2012, 25.03.2013, 24.04.2013, 14.05.2013, 24.05.2013, 23.08.2013, 21.01.2014, 02.05.2014, 17.06.2014, 27.08.2014, 03.12.2014 (copies annexed), wherein vide letter dated 15.06.2015, the respondent had terminated/cancelled the allotment of the plot and duly informed the same to the complainant vide email dated 15.06.2015.

20. That the complainant had not given any heed to the 13 reminders/final demand notices and termination letter sent by the respondents to the complainant in terms of clearing the outstanding towards the plot. Despite the defaults, the respondent had pursued and invited the complainant for taking physical possession.
21. The project has already received completion certificate on 09.09.2010. As per section 3(2)(b) of the Real Estate (Regulation and Development ) Act, 2016, registration of a project under RERA is not required if the promoter has received completion certificate. Therefore, the project falls outside the purview of RERA Act,2016.
22. The complainant herein seeks inter alia delayed possession compensation of her plot W2-12 A after 14 years of offer of possession, with no regard to procedural laws; which under no circumstances can be entertained being barred by limitation.
23. That after completion of entire development works, possession of the plot has already been offered to the complainant vide offer of possession dated



27.09.2008 i.e within the time period prescribed in terms of Clause 22.1 of the plot buyer agreement. However, the complainant herself failed to clear the demand qua the offer of possession and to take physical possession of the plot. That the demands raised by the respondent are as per the terms agreed between the parties at the time of booking.

24. That when the complainant deliberately chose not to make payments of balance sale consideration, constrained respondent had no choice but to issue letter of cancellation/ termination dated 15.06.2015.
25. That all the charges disputed by the complainant were incorporated in the Clause 2 of the plot buyer agreement, wherein the complainant was liable to pay the said charges to the respondent. It is submitted that the Schedule-1 was part of the clause 2 under sub-clause 2.1 wherein other charges like external development charges, preferential location charges, infrastructure development charges, water connection, electrification charges, cost of installing sewerage treatment plant/ Effluent Treatment plant/Pollution Control Devices, Firefighting Charges, Capital cost towards purchase and installation of D.G sets for power back up, Sinking funds towards depreciation of plant and machinery, Interest bearing Maintenance Security, Monthly Maintenance Charges, Refundable Contingency Deposit, Full Registration Charges, Stamp Duty and other incidental expenses were to be paid by the complainant. It is further submitted that SCHEDULE- I states the payment plan for basic cost and other charges,



wherein the referencing to the cost calculation which is duly incorporated below the SCHEDULE- I of the agreement clearly provides the elaborated description of the charges which are to be paid by the complainant.

26. Complainant through this present complaint is raising frivolous allegations against the respondent just to gain sympathy and cover up her default on account of delay in making timely payments.
27. Mr. Hemant Saini, learned counsel for the respondent further argued that the project in question has received completion certificate in toto in 09.09.2010. Possession of the plot was offered to the complainant vide offer of possession dated 27.09.2008. Thereafter, complainant had executed an affidavit cum undertaking dated 27.10.2009 for taking over physical vacant possession of the plot W2-12A, Block W2 in Parklands, Faridabad, a copy of which is placed at page 93 of the reply. As per clause 2 of the said affidavit, complainant has categorically agreed that she has taken the possession of the plot completely to her satisfaction and after due inspection. Respondent had issued a No Objection Certificate dated 11.11.2009 for giving possession of the plot in question to the complainant upon payment of due amounts as per the statement of accounts dated 27.09.2008 under which possession was offered to the complainant. Complainant had also executed a plot maintenance and service agreement dated 21.01.2009 with the maintenance agency. This goes on to show that the respondent had acted dutifully towards complying with the obligations



as per the plot buyer agreement dated 14.09.2007. Thereafter, it was the duty of the complainant to come forward to get the conveyance deed executed and registered. However, the complainant failed to come forward. Respondent had duly issued notice dated 30.11.2011, annexed as Annexure R-8 of the reply to the complainant for execution and registration of the conveyance deed upon payment of revised EDC and other charges. However, the complainant failed to come forward.

28. Learned counsel for the respondent pleaded that the captioned complaint cases form a special circumstance where a single person, i.e, the complainant, had collectively booked 4 plots in the project and thereafter it became difficult for her to make payment qua each of the plot. The basic sale price of the plot in question was Rs 21,25,000/- which was exclusive of the EDC, IDc and PLC. He stated that the total sale consideration of the plot worked out to Rs 34,87,701/- against which the complainant has only made a payment of Rs 25,78,200/-. Complainant stopped making further payments for reasons best known to her. Respondent company had duly sent numerous demand/reminder letters to the complainant, however she failed to make requisite payments in all the captions complaints. The allotment of the complainant qua the plot in question stood cancelled on account of non payment of dues as on 15.06.2015. Since the allotment of the complainant has already been cancelled, complainant is only entitled



to seek refund of the paid amount and cannot claim possession of the plot in question.

29. Learned counsel for the respondent argued that in present complaint it was the respondent who repeatedly chased the complainant for making payment of outstanding balance and for execution of the conveyance deed. Whereas the complainant chose to stay silent bidding her time. The complainant has not placed on record any document showing a single communication with the respondent company wherein she has enquired about the possession of her plots or raised any objection to the demands raised by the respondent. The only communication that has been placed on record is for the month of June 2022, which is a whatsapp communication, arranged merely for the filing of present complaint. In case the complainant was interested in taking possession, she should have agitated her rights atleast once throughout this period before appropriate court. No such action has been taken by the complainant.
30. Ld. counsel for respondent further argued that complainant has only become interested in the property in question on account of increasing real estate prices and wants to use the law of the land to an unfair advantage. Throughout the years complainant chose not to agitate the letter of termination dated 15.06.2015 and neither chose to accept the offer of possession. Complainant cannot be allowed to pursue the present complaint on her whims and fancies after a gap of nearly 14 years from





the date of first offer of possession as being highly time barred. Learned counsel for the respondent placed reliance on judgement passed by Hon'ble Supreme Court in case titled **K. S Vidyanadam Vs Vairavan (1997) 3 SCC 1** wherein it is observed that silence of the vendee for a long time will make it inequitable to give relief of specific performance. The plaintiff must perform his part within a reasonable period of time.

31. Ld. counsel for respondent further quoted judgment of Hon'ble Supreme Court in case titled as '**Bharati Knitting Co. Vs DHL Worldwide Express Courier Division**' 1996 SCC (4) 704 wherein it has been observed that when there is a specific term in the contract, the parties are bound by the terms in the contract. As per the contract, the complainant was bound to take possession of the plot and get the conveyance deed registered upon making payment of requisite amount. However, the complainant failed to do so. Therefore, the allotment of the complainant stood cancelled. Complainant is only entitled to receive refund of the paid amount along with interest.
32. Ld. counsel for respondent furthermore referred to judgement passed by Hon'ble Supreme Court in *Desh Raj Vs. Rohtash Singh, Civil Appeal No.921 of 2022*: decided on 14.12.2022, wherein it is 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. Therefore, the relief claimed by the complainant cannot be accepted upon.

33. Learned counsel for the respondent further pressed that the complainant in captioned complaints had booked 4 plots in the project of the respondent and was unable to fulfil demands pertaining to all four. She chose to retain the plots by making part payments but was unable to pay the remaining outstanding demands. The complainant remained silent with regard to her allotment in the project in question and stopped making payments as per choice. Complainant purposefully chose not to pursue the allotment to seek time for gaining funds. She never agitated her rights nor raised any objection with the respondent throughout the years. Now that the prices of the property in question have gone up, complainant has taken to this Authority for maliciously utilising the law of the land in her interest after not pressing for her right for so many years. He placed reliance on judgement passed by Hon'ble Supreme Court in case titled **Saradmani Kandappan Vs S Rajalakshmi AIR 2011 SCC 3234** and others where it is observed that time is of essence of contract in matters pertaining to sale of immovable property.
34. In view of the aforementioned observations, learned counsel for the respondent submitted that the complainant in the captioned complaint is not entitled to seek relief of possession after keeping silent for more than



15 years. Complainant is only entitled to seek refund of the paid amount along with interest after forfeiture of earnest money.

35. It is pertinent to mention that during the course of hearing in the captioned complaint, learned counsel for the complainant had alleged that the letter of termination and other demand/reminder letters were never served upon the complainant. It was rebutted by the respondent that letter of termination was sent to the address of the complainant and also sent through email. On hearing dated 10.10.2023, learned counsel for the respondent had sought time to place on record complete data pertaining to the year in question, i.e, 2012-2013 regarding service of termination letters and reminders sent in pursuance of it. Today, learned counsel for the respondent submitted that he will file the requisite document in the registry during the course of the day. Upon perusal of record in the registry, it was found that no such document has been filed by the respondent.

#### **E. ISSUES FOR ADJUDICATION**

- (i) Whether the Authority has jurisdiction to entertain the present complaint?
- (ii) Whether the Complainant is entitled to the reliefs claimed by her 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:

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

(i) That the project had already received completion certificate on 09.09.2010 so the project does not get covered into definition of 'on-going project' and is not within purview of RERA Act,2016.

(ii) Present complaint is barred by limitation as complaint has been filed after 14 years of cause of action which is issuance of offer of possession dated 27.09.2008.

(iii) Reliefs sought by the complainant is 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 objection raised by respondents that the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project in question is not an 'on-going project' for the reason that project was completed before the RERA Act, 2016 came into force and had also received completion certificate on 09.09.2010, it is observed that the issue as to whether project shall be considered as "on-going project" has been dealt with and settled by the



Hon'ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil**

**Appeal no. 6745-6749 of 2021** herein reproduced:

*“ 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.”*

Wherein Hon'ble Apex Court held that the projects in which completion certificate has not been granted by the competent authority, only such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. It is pertinent to mention here that respondent in its written statement has not referred to completion certificate dated 09.09.2010, a copy of it has not been placed on record. But respondent in other cases pertaining to plot matters situated in same 'block-W' of same project has placed on record, a copy of part completion certificate dated 09.09.2010. So, a query was raised to ld. counsel for respondent as to whether completion certificate has been obtained for the



block-W and plot in question?. To this, he replied that part completion certificate dated 09.09.2010 had only been obtained by respondent in respect of plot in question.

In light of aforesaid observations, Authority observes that respondent had received part completion certificate on 09.09.2010 not the completion certificate. Moreover, receipt of part completion certificate does not absolve the respondent of its obligations cast upon it pertaining to handing over of possession of plot and execution of conveyance deed. The RERA Act, 2016 was enacted to ensure that both parties, i.e., respondent-promoter as well as complainant-allottee duly fulfils their respective obligations as per agreement for sale executed between them. Herein, the obligation of respondent to actual handover possession of plot still remains which is reoccurring cause of action and the allottee is well within its right to avail relief/remedy under the RERA Act, 2016.

Furthermore, it is observed that getting an on-going project registered is only one, out of the many obligations of the promoter as illustrated in RERA Act,2016. In RERA Act,2016 it is nowhere provided that provisions of the Act shall only be applicable to "on-going" project. Even in judgement of Newtech Promoter's case, the Hon'ble Apex Court has clarified and settled the issue that 'which project shall be considered as an on-going project' as it is the obligation of the promoter to register an on-going project and in case the promoter fails to do so, he shall be liable for imposition of penalty under Section 59 of RERA



Act,2016. It was never a question before the Hon'ble Supreme Court whether a completed project is out of the purview of RERA Act,2016, especially in the circumstances when contractual obligations of promoter towards complainant/allottee as per buyer agreement still remains unfulfilled.

With respect to the objection of respondent that the complaint is barred by limitation, Authority has referred to the judgement of Apex court **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise** where it was held that limitation act applies only to Courts not to Tribunals and Quasi-judicial authorities. It is to mention here that the promoter 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. In the present complaint, stage of actual handing over of possession or final settlement has not been reached. Complainant had filed complaint for seeking relief of setting aside of cancellation and handing over of possession alongwith execution of conveyance deed, which has not yet been delivered/executed by respondent. So, objection raised by respondent on ground of limitation does not any merit and is therefore rejected.



Further, Authority observes that complainant and respondent herein are in relation of allottee and promoter. In support, definition of allottee, promoter and real estate project is referred. As per S.2(d) of the RERA Act, "allottee" is defined as follows:

1. (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 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 oral arguments 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 36 clause (i), (ii) and (iii) of this order stands dealt with and are declared devoid of merit.

37. Factual matrix of the case is that the complainant had purchased a plot bearing no. W-2-13 (originally allotted plot) in project of respondent by way of allotment letter dated 11.05.2007. Subsequently, complainant had signed an undertaking cum affidavit on 18.06.2007 wherein complainant duly agreed for accepting alternate plot, in case of modification of layout plans. Said undertaking is duly signed by complainant and two witnesses both resident of Siddharta Enclave, New Delhi i.e. neighbors/close by residents of complainant's address. Thereafter, plot buyer agreement w.r.t originally allotted Plot no. W-2-13 was signed between the parties. Copy of which has been placed on record by both the parties in their respective pleadings as Annexure R-6 by respondent and at page no. 37 of complaint by the complainant respectively. However, respondent in its reply has stated/claimed that plot buyer agreement w.r.t Plot no. W-2-12A (alternative plot allotted by respondent on its own to complainant)



was executed between parties. No copy of said plot buyer agreement is placed on record by respondent so in absence of documentary evidence, plea is respondent is not taken into consideration being devoid of merit. No formal letter apprising the complainant regarding change of plot from W-2-13 to W-2-12A has been placed on record by respondent. Thereafter, offer of possession in respect of changed/alternative plot no. W-2-12A was issued by respondent to complainant on 27.09.2008 with demand of Rs 3,10,190/-. Against said offer, complainant made payment of Rs 81,082/- on account of maintenance charges and Rs 2,35,190/- on account of utility charges, conveyance deed charges, stamp duty charges and basic sale price on 20.10.2008. Subsequent thereupon, complainant executed plot maintenance and service agreement in respect of plot no. W-2-12A on 21.01.2009. Payments and execution of maintenance agreement in respect of plot no. W-2-12A was made by complainant without raising any objection to it in year 2008. No objection of any sort was raised even in later years like 2009,2010,2011 and so on till filing of this complaint. That now, after acceptance of plot no. W-2-12A it does not lie in mouth of complainant to press upon arbitral change of plot.

38. Perusal of clause 22.1 of builder buyer agreement dated 14.09.2007 reveals that the plot was to be delivered within a period of 24 months from the date of sanction of service plans. Plea of respondent is that service plans for entire project got approved on 21.03.2014, hence deemed date of possession comes out to 21.03.2016. Complainant in complaint has stated deemed date of



possession as 15.09.2009, i.e., 24 months from date of builder buyer agreement. As per submission of respondent in its written statement, part completion certificate for the block-W in which complainant's unit is located has been obtained by respondent on 09.09.2010 and service plans got approved on 21.03.2014. Be the case as it may be, question arises herein that how can part completion certificate on 09.09.2010 be issued by the Department of Town and Country Planning without approving the necessary plans/estimates. No copy of service plans dated 21.03.2014 has been placed on record. Thus, the plea of respondent pertaining to approval of service plans on 21.03.2014 does not have authenticity attached to it and therefore, it cannot be relied upon for determining the deemed date of possession.

39. In view of aforementioned observation, taking a period of 24 months from the date of plot buyer agreement i.e 14.09.2007, possession of the unit should have been delivered to the complainant on 14.09.2009. Therefore, the deemed date of delivery of possession works out to 14.09.2009.

40. As per observations recorded in the aforementioned paragraph possession of the plot should have been delivered by 14.09.2009. Respondent had issued an offer of possession to the complainant on 27.09.2008 alongwith demand of Rs 3,10,190/-. It is alleged by the complainant that said offer of possession was not a valid offer as it was issued without obtaining occupation certificate/completion certificate from the competent authority to show that the project was complete and habitable for living at the time when offer of



possession was made. It is to mention here that perusal of file reveals that said objections has been raised by complainant by way of present complaint only, no objection by way of mail/letter was raised by complainant to the offer of possession dated 20.10.2008. Rather complainant duly made payments of Rs 81,082/- on account of maintenance and Rs 2,35,190/- on account of utility, conveyance and basic charges on 20.10.2008 and executed plot maintenance and service agreement on 21.01.2009. Said agreement is duly signed by two witnesses who are residents of Siddharta Enclave, New Delhi, i.e., current address of complainant at that time. In pursuance of receipt of outstanding dues from complainant, respondent on 11.11.2009 issued a 'no objection certificate for giving possession of plot no. W-2-12A, 237 sq yds' to complainant. Relevant content of said letter is reproduced below for reference:-

*'We hereby confirm that you have deposited all the due amounts as per the statement of accounts sent to you vide our letter dated 27.09.2008 under which we offered possession of the aforesaid plot to you and you have duly executed indemnity cum undertaking and maintenance agreement with us.*

*You are requested to take possession of the aforesaid plot from our site office at Setcor-76, Parklands , Faridabad and contact Mr. Rakesh Sharma (Mobile no. 93XXXXXX07) who will handover the possession of the aforesaid plot on submitting this NOC in original to him.*

*Please refer to our communication dated 23.03.2009 with regard to revision in the external development charges which is enclosed herewith for your ready reference. The sale deed shall be executed only after the revised external development charges and stamp duty charges as calculated by us, are paid'*



Said letter is annexed by respondent in its reply as Annexure R-7, on the other hand complainant remained silent on this issue. Content of letter reveals that it was issued on same address as were allotment, buyer agreement and plot maintenance agreement and even said letter contains receiving of complainant dated 12.11.2009. Hence, it can be safely assumed that complainant was aware of NOC pertaining to possession of plot. Nevertheless, no objection was raised by complainant then nor actual possession of plot was taken. Coming to the issue of validity of offer of possession, it is the submission of the respondent, that the block in which the plot of the complainant is situated had received part completion certificate on 09.09.2010. Further the complainant had accepted offer and duly signed maintenance agreement on 21.01.2009. Fact of the matter is that at the time when respondent had issued offer of possession dated 27.09.2008 to the complainant, respondent had not received completion certificate for the said plot. The land parcel on which the plot of the complainant is situated had received part completion certificate only on 09.09.2010, thereby certifying that the basic amenities were available at the site and the plot in question was ready for habitation. Therefore, the offer of possession dated 27.09.2008 cannot be called a valid offer of possession.

41. The principal argument of the respondent is that it had time and again approached the complainant to come forward for taking possession and for execution of conveyance deed upon payment of remaining charges. However, the complainant failed to do so. Despite issuing several demand/reminder



letters, complainant failed to come forward for execution of conveyance deed upon making payment of outstanding amounts. Perusal of file reveals that after issuing of NOC dated 11.11.2009, respondent had issued letter dated 30.11.2011 with subject 'request for execution and registration of conveyance deed upon payment of revised external development charges and other charges' alongwith demand of Rs 6,17,783/-. Reminders for said letter were issued on 30.05.2012, 29.10.2012, 14.12.2012, 25.03.2013 and 24.04.2013. Thereafter, respondent had issued letter dated 14.05.2013 stating that 'this is in reference to the offer of possession sent to you for your unit W-2-12A at our project Parklands, Faridabad. We have been waiting inordinately for sales deed execution of your unit. However, we have observed that there is following outstanding against your unit-BPTP-Rs 6,84,413/- and BPMS -Rs 30,158/-. Reminder for said letter was issued by respondent on 24.05.2013, 23.08.2013, 21.01.2014, 02.05.2014, 27.08.2014, 03.12.2014. When the complainant failed to fulfil its part of the obligation, respondent was constrained to cancel the allotment of the complainant vide letter of termination dated 15.06.2015. All these letters were issued on Siddharta Enclave, New Delhi address of complainant, however respondent has failed to attached proof of delivery on that address.

42. Most contentious issue in this plaint is that according to complainant, offer of possession made to the complainant in 27.09.2008 was not a proper offer of possession because it was supposed to have been offered after receiving part completion certificate in the year 2010 and thereafter, the various



communications issued by the respondent qua possession of the plot in question are incomplete as there was deficiency in basic services at the site of the project. A bare perusal of the demand/reminder letters annexed with the reply would show that the respondent had continuously approached the complainant for getting the conveyance deed executed upon payment of requisite amount, however, the complainant failed to respond to said communications. Whereas it is the stand of the complainant that she had not received any of the communications including the letter of cancellation dated 15.06.2015 and that it is she who had regularly approached the office of the respondent company to seek information regarding possession of the plot in question but received no satisfactory response. As per the complainant, it was only in the year 2022 that the complainant was verbally apprised of the letter of termination dated 15.06.2015. It is also alleged that respondent has raised exorbitant demand from the complainants despite having received more than the basic sale consideration of the plot.

43. During the course of arguments, learned counsel for the complainant had submitted that the complainant never received any of the communications including the letter of termination but was rather handed over several demand letters post the date of cancellation which makes the alleged cancellation void. However, learned counsel for the complainant failed to place on record any such communication in support of this claim. In these circumstances, the respondent was directed to submit proof that the letters including cancellation notice issued





to the complainant had been received by her. But respondent, too, failed to place on record the relevant documents which evident that letters were received by the complainant. Since both parties have failed to file the aforementioned documents, the Authority deems it fit to proceed with the documents already placed on record and available on file.

44. After going through submissions of both the parties and perusing documents placed on record, Authority observes that the respondent in this case had obtained a partial completion certificate on 09.09.2010 issued by Town and Country Planning Department in respect of 154.30 acres land out of their colony which includes the land parcel on which the plot of the complainant is situated. A presumption of truth is attached to the partial completion certificate granted by Town and Country Planning Department. Such a certificate could have been granted only after due diligence on the part of concerned department. Meaning thereby that at the time of grant of part completion certificate it has been certified that the required developmental works in residential colony at Faridabad for residential area measuring 154.30 acres are available at site. In said certificate, it has been specifically mentioned that the development works for which the certificate is being issued are water supply, sewerage, storm water drainage, roads, horticulture and electrification. In view of the part completion certificate, the unmistakable conclusion is that the land parcel on which the plot of the complainant is situated was available for habitation since 09.09.2010.

A handwritten signature in blue ink, appearing to be 'Lad', written over a horizontal line.

45. It is the contention of the complainant that the complainant was not informed w.r.t the receipt of part completion certificate by the respondent. On perusal of documents placed on record it is observed that after receipt of part completion certificate, respondent had issued letter dated 30.11.2011 to the complainant for execution and registration of conveyance deed upon payment of revised EDC and other charges. Respondent further issued reminder letters to the complainant to come forward and proceed with the formalities with regard to the handing over of possession. However, the complainant failed to come forward. It is pertinent to observe that throughout the period of 2008 till 2011, complainant has not agitated the offer of possession dated 27.09.2008 with the respondent or any other competent Authority. Even after having been issued letter of termination dated 15.06.2015, complainant remained silent with regard to her allotment and subsequent possession of the plot in question.

46. It is the contention of the complainant that possession of the plot should have been delivered by 15.09.2009. However, the complainant has not placed on record a single communication wherein it has been agitated that she has not received possession of the plot in question or has challenged the offer of possession dated 27.09.2008. It is the submission of the complainant that respondent has illegally retained an amount of Rs 26,78,200/- but the complainant herself has failed to explain her negligence in pursuing her rights qua the plot in question in the project of the respondent. In case she had experienced any difficulty in taking possession of the plot or alleged illegal



demands from the respondent, complainant should have agitated the same before competent Authority or raised objection with the respondent. Upon perusal, no document has been placed on record by the complainant to show that she had actively pursued the allotment qua the plot bearing no. W2-12A in the project in question with the respondent. Even if the contention of the complainant that she had not received any demand/reminder letters from the respondent is assumed correct, Authority fails to understand the dormant response of the complainant in pursuing her rights for a period of more than 15 years. The only communication placed on record pertains to the year 2022 which is just before filing of the present complaint. Fact of the matter is that the respondent had issued an offer of possession dated 27.09.2008 to the complainant qua the plot in question bearing no. W2-12A. After receiving said offer, complainant had given an undertaking dated 27.10.2008 in which it has been clearly mentioned that she is taking physical and vacant possession of the plot in question and thereafter complainant was also issued a no objection certificate by the respondent 11.11.2009. All these documents clearly show that the respondent had actively pursued the possession of the plot in question with the complainant and that the complainant was involved in every step. Though the offer of possession dated 27.09.2008 was not a valid offer but with the issuance of letter dated 30.11.2011, complainant was well aware that the respondent was in a position to transfer the legal title of the plot in question to her name. However, why the complainant thereafter failed to pursue her



possession has not been explained by the learned counsel for the complainant. The complainant has alleged that the respondent had raised illegal demands on account of club membership charges, conveyance deed charges, electrification and STP charges, External Development Charges, Internal development charges, Stamp Duty Charges which are not part of the plot buyer agreement dated 14.09.2007. However, again the complainant has failed to prove that she had objected to these demands with the respondent. It seems that the complainant is making use of later day events just to bolster her claim without any substantial documentary evidence. Further, it has been submitted by the respondent that these charges have been duly mentioned in the plot buyer agreement and the complainant had agreed to pay the same. In this regard, perusal of builder buyer agreement reveals that complainant has agreed to pay the EDC, IDC, electrification and STP charges and conveyance deed/stamp duty charges as per clause 2.2, 2.4, 2.5 and 2.6 of agreement respectively. So, complainant is liable to pay the same. Further, club membership charges are agreed between the parties as per schedule-I of agreement. Moreover, club charges can only be claimed by respondent if club is operational, in case club is not operational then complainant will become liable to pay membership charges only when club becomes operational.

47. On the other hand, it is the stand of the respondent that the complainant in this case has defaulted on account of non payment of dues despite issuance of reminder letters because of which the allotment of the complainant was

had

cancelled on 15.06.2015. No documentary evidence of service of cancellation letter upon complainant has been placed on record by respondent. Though, it has been proved by the respondent that the complainant has time and again failed to honour the demands raised towards the sale consideration, the respondent too has failed to explain as to why the respondent had not returned the amount paid by the complainant on the face of continuous default after forfeiting the earnest money. Respondent is a reputed builder, well aware with the market practices in the real estate industry. In the event that the complainant had failed to respond to the letter dated 30.11.2011 for execution of conveyance and subsequent reminder letters, respondent should have actively pursued with the cancellation of the allotment immediately after the expiry of the notice period. As to why the respondent chose to cancel the allotment after a delay of more than 4 years has not been justified. Further as per clause 10 of the buyers agreement, after issuing letter of cancellation, respondent should have refunded the money of the complainant after resale of the plot. Respondent too failed to follow up/act upon the cancellation and has rather retained the amount paid by the complainant for more than 8 years from alleged cancellation. After having wrongly enjoyed the hard earned money of the complainant, respondent cannot be allowed to take advantage of its dominant position and take the stand that the complainant is now only entitled to seek refund of the paid amount after forfeiture of the earnest money. Respondent was having an option to refund the money after issuing of termination letter in 2015 but it could not exercise it for



reasons best known to builder. Though the complainant in this case is at fault for not pursuing her allotment in the project but the option for refund of the paid amount after forfeiture would have been justified, had the respondent done so immediately or even within reasonable time after issuing the letter of cancellation dated 15.06.2015, which is not the case in present complaint.

48. As is evident from the above facts, both parties failed to actively pursue their interests qua the plot in question and chose to remain silent until the filing of the present complaint in year 2022. Complainant should have agitated her rights before the appropriate Authority in case of non delivery of possession. Whereas the respondent should have cancelled the allotment of the complainant immediately in case of continuous default in execution of conveyance deed and returned the paid amount after forfeiture of earnest money . Fact of the matter is that the plot bearing no. W2-12 A is allotted to the complainant and still stands in her favour. Respondent has already issued offer of possession/letter for execution of conveyance deed in favour of the complainant. As is apparent from the facts and submissions, both the complainant and respondent have defaulted in their conduct and chosen to stay silent until the filing of present complaint. It is the contention of the respondent that the complainant slept over her rights and is only now agitating the matter when the prices of the property have gone up. In light of this submission, it is observed that though the complainant did not actively pursue her allotment, however, even the conduct of the respondent was arbitrary and to an unfair advantage. The offer of possession issued by the



respondent was initially without statutory approvals and cancellation of allotment cannot be sustained on such defective 'offer of possession'. Further, even after issuing letter of termination dated 15.06.2015, respondent chose not to act upon said letter and refund the amount paid by the complainant. This act of respondent renders said cancellation as void/not to be relied upon. Respondent has deliberately retained the consideration paid by the complainant towards booked plot for more than 15 years and now cannot be allowed to run away from its liability to deliver possession in lieu of said consideration. Though the complainant has delayed in pressing her relief but the said fact does not diminish the rights of the complainant qua the plot in question after having invested a huge amount of ₹ 25,78,200/- in the year 2008 itself. Further, Authority observes that respondent has misplaced its reliance on judgement passed by Hon'ble Supreme Court in case titled as 'Bharati Knitting Co. Vs DHL Worldwide Express Courier Division' . As per said judgement not only the complainant but the respondent is also bound by the terms agreed between the parties. Respondent has agreed that in case the allottee is in breach of the terms then respondent is entitled to terminate the allotment, and refund the balance amounts already paid by the complainant after resale of the unit. However, the respondent too chose not to agitate the terms of the contract and rather retained the amount deposited by the complainant. Herein both parties have committed default in respect of the agreed terms of plot buyer agreement.

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49. The issue remaining in the present complaint is with regard to the delay interest admissible to the complainant on account of delay caused in delivery of possession. As per observations made in para 35 of this order, possession of the plot should have been delivered to the complainant by 14.09.2009. As observed above, the complainant came to know that the respondent company had requisite documents to legally transfer the title of the plot in favour of the complainant vide letter dated 30.11.2011. Therefore, for the period from 14.09.2009 till 30.11.2011 the complainant is entitled to receive delay interest on account of delay caused in delivery of possession as per Rule 15 i.e SBI MCLR + 2% on the entire payment made prior to 30.11.2011.

50. Now with regard to the period between 30.11.2011 till the filing of present complaint, it is observed that nothing has been put on record to show as to why the complainant chose not to agitate her rights before appropriate Court of law. The respondent on the other hand failed to proactively proceed with the allotment of the complainant and after wrongly retaining a huge amount of more than Rs 25.78,200/- till date cannot be allowed to shy away from its obligation to deliver possession. Both parties failed to properly pursue the allotment formalities with regard to the plot bearing no. W2-12A. Accordingly, to balance the equities in the matter and in the interest of justice, Authority decides to maintain the period from 30.11.2011 till now to be treated as zero period i.e neither the complainant will be entitled to get delay interest for this period nor the respondents can claim holding charges or maintenance charges or interest on





balance due amount. For this reason, no maintenance charges will be applicable, accordingly demands raised by the respondent on account of holding charges, maintenance charges and or interest on any delayed payments are hereby quashed. Maintenance charges shall be applicable after actual handing over of possession of plot to the complainant.

51. 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(z) of the Act which is as under:

*(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation.-For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

52. 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 india highest marginal cost of lending rate +2%:**

*Provided that in case the State Bank of India marginal cost of lending rate (NCLR) 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”.*

53. 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. 21.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

54. 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 due date of possession i.e. 14.09.2009 till the date of acknowledgement i.e 30.11.2011.

55. Authority has got calculated the interest on total paid amount from due date of possession till the date of acknowledgement in respective complaints as per details mentioned in the table below:

Complaint no. 1885 of 2022



| Sr. No.       | Principal Amount<br>(in ₹) | Deemed date of<br>possession or date of<br>payment whichever is<br>later | Interest Accrued<br>till 30.11.2011<br>(in ₹) |
|---------------|----------------------------|--|---|
| 1.            | 25,78,200/-                | 14.09.2009   | 6,13,541                                      |
| <b>Total:</b> |                            |  | 6,13,541/-                                    |

Complaint no.1886 of 2022

| Sr. No.       | Principal Amount<br>(in ₹) | Deemed date of<br>possession or date of<br>payment whichever is<br>later | Interest Accrued<br>till 30.11.2011<br>(in ₹) |
|---------------|----------------------------|--|---|
| 1.            | 27,16,065/-                | 12.10.2009   | 6,23,951                                      |
| <b>Total:</b> |                            |  | 6,23,951/-                                    |

Complaint no. 1887 of 2022

| Sr. No.       | Principal Amount<br>(in ₹) | Deemed date of<br>possession or date of<br>payment whichever is<br>later | Interest Accrued<br>till 30.11.2011<br>(in ₹) |
|---------------|----------------------------|--|---|
| 1.            | 26,65,500/-                | 15.06.2009   | 7,05,755                                      |
| <b>Total:</b> |                            |  | 7,05,755/-                                    |

Complaint no. 1888 of 2022

| Sr. No. | Principal Amount<br>(in ₹) | Deemed date of<br>possession or date of<br>payment whichever is<br>later | Interest Accrued<br>till 30.11.2011<br>(in ₹) |
|---------|----------------------------|--|---|
|         |                            |  |   |

|               |             |            |            |
|---------------|-------------|------------|------------|
| 1.            | 28,24,875/- | 15.06.2009 | 7,47,953   |
| <b>Total:</b> |             |            | 7,47,953/- |

#### F. DIRECTIONS OF THE AUTHORITY

56. 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 a letter apprising the complainant exact date and contact no. of representative in order to deliver actual possession of plot to the complainant within a period of one month from the date of uploading of this order. Said letter 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 along with revised statement as per observations made in this order.

(ii) Respondent is directed to pay upfront delay interest as calculated in para 50 of this order to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of this order.



(iii) Complainant is directed to accept the offer of possession issued by the respondent and take physical possession within a period of 30 days from date of letter issued by respondent.

(iv) Respondent is directed to get conveyance deed of plot of complainant executed within 90 days of actual handover possession of plot. In case, any amount is due on account of stamp duty charges, then respondent shall inform the same alongwith letter of actual handing over of possession to complainant.

(v) 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.

(vi) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

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

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

  
.....  
**NADIM AKHTAR**  
[MEMBER]