

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

Complaint no. : 1156 of 2023
Complaint filed on : 22.03.2023
Date of decision : 14.05.2024

Adit Bhatia & Usha Bhatia
Both R/o: - T-09/601, Palam Terrace Select, Sector- 66,
Gurugram- 122018

Complainants

Versus

1. M/s Ramprashtha Estate Private Limited.
Office at: - Plot No. 114, Sector-44, Gurugram- 122002
2. Amit Yadav (Director of the respondent company)
Office at: - 67, Shanti Niketan, Chanakya Puri, New Delhi-
110021
3. Arvind Walia
Office at: - A-105, Ground Floor, Vasant Vihar, Kusum
Pur, Delhi- 110057
4. Saurabh Rana
Office at: - C-4049, Vasant Kunj, New Delhi- 110070

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Uday Raj Ram
Shri R. Gayathri Manasa and Shri Sougat
Sinha and Navneet Kumar

Advocate for the Complainants

Advocate for the respondents

ORDER

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

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

A. Unit and project related details

2. The particulars of unit details, 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 tabular form:

S. No.	Heads	Information
1.	Project name and location	Cannot be ascertained
2.	Project area	Cannot be ascertained
3.	Nature of the project	Cannot be ascertained
4.	Unit no.	N.A
5.	Unit measuring	200 sq. yds. (As per receipt information at page no. 14 of complaint)
6.	Date of allotment letter	N.A
7.	Date of execution of plot buyer agreement	Not executed
8.	Total consideration	Rs.30,00,000/- (As alleged by the complainant at page no. 10 of the complaint)
9.	Total amount paid by the complainants	Rs.30,00,000/- (As per receipt information on page no. 14 of the complaint)
10.	Due date of possession	Cannot be ascertained
11.	Occupation Certificate	Not obtained
12.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -



- a. That on 09.02.2014, the complainants had booked a plot of size 200 sq. yds. with Ramprastha Estate Pvt. Ltd after making a payment of RS 30,00,000 through the below cited Cheques at their Registered Office: Shop No 19, C-Block Market, Vasant Vihar, New Delhi in the presence of all the directors.
- b. It is therefore pertinent to mention here and for the matter of record that the complainants had paid a total amount of Rs.30,00,000/- to the respondents for the aforesaid plot. At the time of booking of plot, the buyer/ complainants were assured that the payment done in 2014 for the said plot, would be the full payment, whereas the provisions of section 13 of Act 2016 forbid a promoter to accept a sum more than ten percent of the cost of the unit as an advance payment without first entering into a written agreement for sale and register the said agreement for sale.
- c. That after constant follow ups with the respondents to execute BBA, handing over the allotment letter and other relevant documents, the respondents made excuses on one pretext or the other, informed the complainants that their mapping was not approved, hence, couldn't execute BBA.
- d. It is noteworthy to mention here that the respondents have not executed the builder buyer agreement (BBA) till date, a BBA is the most important/rudimentary piece of document transpires between any builder-buyer in the event of a deal between them, the agreement of sale has to be in a prescribed form and shall specify the particulars of



development of the project, along with specifications and internal and external development works, the date and the manner by which the payments are to be made, the date on which the possession of the unit is to be handed over, and the rate of interest payable by the promoter to the allottee and the allottee to the promoter in case of default. However, no such written agreement for sale has been entered into by Ramprastha Developers, shows that the respondents had the criminal intent to cheat the complainants from the inception.

- e. That the complainants had tried to contact the respondents on numerous occasions through phone, emails for the execution of the buyer agreement and but they remained defiant. During a visit to Ramprastha office, Mr. Ashish Ahluwalia, the project Manager for Ramprastha Sector 92 & 95 told the complainants that the delay in executing the buyer agreement was due to pending approval from the competent State authorities, but he assured that they would get it soon, thereafter, buyer agreement and allotment letter would be given to the complainant.
- f. That the complainants have inspected the project site on numerous occasions but every time it was found that no development work had taken place at the proposed project site.
- g. Thereafter, coming in contact with other buyers in the same project brought to light a grim reality that the respondents are dealing with everyone (buyers) on different basis, as a lot of people in the same



- project had the BBA while some only had payment receipts, including the complainants, which felt cheated.
- h. That the complainants also came to know that many complaints are already pending in various PS of Delhi, and the respondents have made huge money by cheating innocent buyers.
- i. That the complainants have raised their concerns many times before the respondents but it had fallen flat on their deaf ears. The most disturbing fact is that they are influential people who enjoy selective protection from the local administration as well
- j. That the complainant, after waiting for a very long period, approached the respondents again to know the status of construction of the project. The respondents expressed their inability to hand over the possession of the plot and informed that they could not execute BBA as well as they haven't got the necessary approval from the competent authorities.
- k. That due to the above noted illegalities committed by the respondents, the complainants have lodged his complaint at the office of Deputy Commissioner of Police (Anti Land and Building Racket Section) Economic Offence Wing, Crime Branch, Mandir Marg 110001.
Vide Diary No: D-207 dated 28/01/2023 which has later been clubbed with an already lodged F.I.R against the Respondents.
- l. That the respondent have caused a wrongful loss to the complainant and caused wrongful gain to themselves by dishonestly inducing them into a sham project.

- m. That the facts of the case clearly show that the respondents had dishonest intention to cheat and defraud the complainants. Due to this the complainants have gone through mental harassment for many years and caused monetary loss also to the complainants.
- n. That the respondents were required to handover the possession of the plots to the complainant within the assured date of 3 years and 3 months (Grace Period) as committed at the time of booking of the plot. On the commitment of the respondents, the complainant has made the entire amount so demanded towards the consideration by the respondent till date. The respondent on the other hand have failed to fulfil their part of commitment and have not delivered the possession of the plot within the agreed period and till date
- o. That the respondents are not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless customers/ consumers but also for mental torture and harassment to the complainant by unnecessarily misguiding, not executing the builder-buyer agreement till date, and delaying in handing over the possession of the subject property.
- p. Hence the respondents are liable to compensate the complainant for causing delay in handing over the possession of the plots, compensation towards deficiency in services, compensation for causing mental torture and harassment to the complainant, and towards legal cost.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

- I. Direct the respondent to hand over the possession of the residential plot at the original site at Ramprastha City, Sector 92, and Gurugram.
 - II. Direct the respondents to pay to the Litigation cost of Rs.80,000/-
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty

D. Reply by the respondent.

6. The present complaint has been filed by the complainant against the respondent namely i.e., M/s Ramprastha Estates Pvt. Ltd. as R1 and Sh. Amit Yadav, Arvind Walia and Saurabh Rana as R2 to R4 respectively as mentioned in proforma-B as well as memo of parties. However, the reply has been filed by M/s Ramprastha Promoters and Developers Private Limited instead of M/s Ramprastha Estates Pvt. Ltd. As per record, the payment receipts were issued by M/s Ramprastha Promoters and Developers Private Limited only whereas, no objection w.r.t impleadment of M/s Ramprastha Promoters and Developers Private Limited in the present complaint as a necessary party has been raised by it while filing the reply. Further, the Authority observes that the M/s Ramprastha Estate Private Limited is the subsidiary company of the M/s Ramprastha Promoters and Developers Private Limited. Therefore, in view of the admitted liability by the M/s Ramprastha Promoters and Developers Private Limited, the reply is hereby taken on record. The respondents have contested the complaint by filing reply dated 26.09.2023 on the following grounds: -



- I. That the present case is nothing more than a sheer abuse of process of law on the face of it by the present complainant with the sole motive of extracting huge amounts of interest from the respondents which itself manifests the malicious intent of the present complainants.
- II. It is submitted that the complainant had approached the respondent no.1 and made inquiries regarding future projects of the respondents. That the complainants were categorically informed there is no plot available since the zoning plans have not been approved. The complainant had voluntarily sought to advance money to the respondent no. 1 in anticipation of future approval and in the hope of making speculative gains. But since the zoning plans have not been approved by the government till date, the complainants have sought to file this vexatious complaint which is completely unsubstantiated and is bereft of any material documentary evidence. The respondent no.1 has not agreed to provide any service whatsoever to the complainants since the plans were not approved by the competent authority and the complainant has not provided any documents to prove that any such promise was ever made by the respondents. The complainant has voluntarily entrusted a sum of money to the respondents so that they will get the first priority in case the development plans eventually get approved by the competent authority. The respondent no.1 has neither promised any particular plot or location nor promised any particular price or completion date to the complainants. Hence, there is no



question of any breach by the respondent no.1 and no cause of action has accrued in favour of the complainants. .

- III. The complainants fully being aware of the dynamic prospects of the said futuristic project which was indeterminate at the point of time when the complainants paid the money and the fact that it is subject to various government approvals for which there is no time line assured by the government authorities, either promised or otherwise, have still decided to keep their money with the respondent no.1 which was clearly with a speculative purpose and such speculative acts are not protected by any law. Hence, no right of the complainants could be said to have been breached by the respondents, giving rise to any claim for interest as alleged by the complainants. Hence, the complainant is liable to be dismissed with costs.
- IV. That it is herein submitted that from the date of payment till the date of filing of the present complaint, the complainant has never raised any demand or claim whatsoever even though the complainant had the option at all times which show that the complainants voluntarily let his money remain with the respondent no.1 for his own selfish and speculative intents. The Complainants have now approached the Authority with concocted and fabricated story to conceal the true matrix of the situation accordingly to which the complainant has no vested right in any determinate project but has merely paid money to be allowed to participate in case the approvals had come through. The conduct of the complainants clearly indicates that the complainant's

objects and intents are speculative not only behind making the payment but also behind filing the present complaint. It is shocking that the complainant is claiming refund and trying to abuse the process of this Authority to claim hefty interest which is not tenable in law in the facts and circumstances of the present case. The complainants have no vested right to claim refund of amount paid as there is no question of any delay as alleged by the complainants. It is submitted that the delay is absolutely non-existent and imaginary under the present facts and hence, there is no entitlement of any interest whatsoever.

- V. That further no date of possession has ever been mutually agreed between the parties. In absence of any document in the nature of a builder buyer agreement, which contains several terms and conditions including the date of possession and the consequences of default, no date of possession can be said to have been mutually agreed between the parties. It is trite in law that a party claiming default must first prove the default beyond reasonable doubt by means of substantial evidence. The complainants herein has not adduced any reasonable proofs in the nature of documentary evidence which establishes the date of possession, terms and conditions of possession, default and the consequential effect of such default. It is submitted there is no possibility of execution of a builder buyer agreement because the property is indeterminate and also there are no specific terms that have been mutually agreed.



- VI. That it is submitted that the complainants cannot be construed as an "Allotee" by any stretch of imagination. That, for existence of a status of an "Allotee", the pre-existing criteria is that of a subsistence of "plot" or "apartment" or a "building" and the consideration must have been towards such determinate "plot" or "apartment" or "building". That in the present case at hand, there is no pre-existing plot as alleged by the complainant. That the complainants had merely made a payment towards a future potential project of the respondent no.1 which on such date was not even in existence. Further, such advance payment by the complainant was only adopted as a measure to ensure priority over others when any such project is launched. That the complainant herein does not meet the criterion established by the Act, and therefore, cannot be admitted as "an Allotee" before this Ld. Authority.
- VII. That the objective of the legislation of RERA is twin folded. One, to regulate and promote 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 secondly, to protect the interest of the consumers in the real estate sector. That therefore, only a genuine allottee within the meaning of the Act can avail the benefit of remedy under this Authority and the complainant who has come through misrepresentation, deceit and suppressing material facts with an unclean hand and ill conscience cannot approach before this Authority.



- VIII. That the respondent no.1 is in the process of obtaining the approvals and shall bring the plots into existence on such approval and shall offer the possession of the same but as on date, the complainants have no vested right to demand refund of amount paid. The complainants always had the opportunity to take its money back but had voluntarily let its money remain with the respondents. That the objective of the RERA is not to substitute civil proceedings for plain recovery which would otherwise fall within the jurisdiction of the Civil Court.
- IX. That the complainant has approached the respondents and have communicated that the complainants are interested in a project which is "not ready to move" and expressed their interest in a *futuristic project*. It is submitted that the complainants are not interested in any of the ready to move in/near completion projects of the respondents. It is submitted that a futuristic project is one for which no price can be determined and such projects are sold at the prevailing rate which is determined when the project receives its approval and further amounts such as EDC/IDC charges are also known with certainty. It is submitted that on the specific request of the complainant, the money was accepted and no commitment was made towards any particular price or property or date of handover or possession since such terms were not foreseeable or known even to the respondent. The respondent no.1 had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainant towards the price and the

complainant was duly informed that such prevailing price shall be payable as and when approvals are in place. The complainant is an elite and educated individual who has knowingly taken the commercial risk of advancing money even though the property was non-determinate and the price was dependent upon future developments and was not foreseeable at the time of booking transaction. The complainant cannot be allowed to shift the burden on the respondent no.1 as the real estate market is facing rough weather.

- X. That it is submitted that the complainant is not an allottee and hence the proceedings are merely in the nature of recovery which is not maintainable before this Hon'ble Forum. That even if it is assumed that such a claim in the nature of money is maintainable, the claim is hopelessly barred by limitation filed after the expiry of 3 years from the date of payment.
- XI. All other averments made in the complaint were denied in toto.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties as well as the written submission of the complainant.
8. During proceeding dated 17.08.2023, the counsel for the complainant wishes to file an application for amendment for relief sought and impleadment of co-allottee Ms. Usha Bhatia and the said request was allowed and was directed to file the same within a period of one week in the registry of the Authority. The complainant thereafter, filed the said application on

09.11.2023, and the said application was allowed vide order dated 30.11.2023.

E. Jurisdiction of the authority

9. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Objections raised by the complainant

F.1 The complaint is not maintainable for the reason that complainant is not an allottee as no allotment of unit plot was done in favour of the complainant.

13. The respondent has averred that the present complaint is not maintainable for the reason that complainants are not an allottee, as no allotment of unit was made in favour of the complainants and the registration was an expression of interest towards the upcoming project of the respondent. For adjudicating upon this, it is important to refer to the definition of "allottee" as provided in Section 2(d) of the Act. Said provisions are:

"Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as leasehold) or he, has on to whom a plot whether as freehold or leasehold 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."

14. On bare perusal of the definition of "allottee", it is evident that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter. Upon careful perusal of documents on record, it is revealed that the complainants had paid a sum of Rs.30,00,000/- for purchasing a plot admeasuring 200 sq.

yards in future project of respondents. The fact that the multiple payments were received by the respondents against a 200 sq. yards plot from the complainants clearly shows that there was very much an agreement to sell the 200 sq yards with the complainants. In the present case, the complainants are aggrieved by the act of non-compliance of this part of the contract by the respondent. Hence, objection of the respondent that complaint is not maintainable stands rejected.

F.II Relief sought by the complaint under section 18 is not maintainable as there is no agreement of sale executed between the parties.

15. The respondent raised another objection that complaint is not maintainable as there is "no agreement to sale" executed between the parties. Mere fact that an allotment letter specifying a unit no. was not issued to complainant does not mean that they were not an allottee of the respondent. Once respondent has accepted the multiple payments from complainant for purchase of a plot in his project, it was the obligation of respondent to allot them a unit no. within a reasonable time. Failure on his part to do so will not affect the rights of applicant as an allottee.
16. Even a receipt which specifies the details of unit such as area of the plot, price etc., booked by complainant will be treated as agreement for selling the property. The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered into between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement with respect to agreement entered into between the allottee and the promoter before RERA Act of 2016 coming into force. Accepting the payment towards a unit in present and future project shows there was a meeting of

minds that the promoter will give possession in any present or future project developed by respondent. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly shows that the complainant booked a plot in respondent's future project. Accordingly, contention of the respondent that there is no agreement to sell has been executed stands rejected. Hence, relief sought by the complainant under the provisions of section 18 of the RERA Act is maintainable.

F.III The present complaint is barred by the limitation.

17. The respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of *Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation vs Commissioner of Central Excise* wherein the Hon'ble Apex Court had held that Indian Limitation Act applies only to the courts and not to the Tribunals. 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 a Court. The promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring
18. On consideration of the documents available on record and submissions made by the party, the authority observes that the project in question is an ongoing project, and the respondent/promoter has failed to apply and

obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act

19. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
20. Moreover, it is observed that vide receipt dated 08.03.2014, it was agreed between the parties that the promoter shall give possession of a plot having size of 200 sq. yards to the complainant. Further, it was agreed that on completion of the process of allotment to all allottees, the promoter will get the plot registered in name of the complainant on payment of stamp duty and other charges payable to the government. However, despite receipt of consideration amount of Rs.30,00,000/- from the complainant back in 2014 against the booked plot, the respondent-promoter has not even allotted a specific plot to the complainant and also no effort has been made by it to get the plot registered in her name till date. As the respondent has failed to handover the possession of the allotted plot to the complainant and thus, the cause of action is continuing till date and recurring in nature. The authority

relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduced as under for ready reference:-

22. Continuing breaches and torts- In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

21. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint barred by limitation is hereby rejected.

F. Findings on the relief sought by the complainants

F.1 Direct the Respondent to hand over the possession of the residential plot at the original site at Ramprastha City, Sector 92, and Gurugram.

22. These are admitted facts that on 09.02.2014, the complainants had booked a plot admeasuring 200 sq. yards. in futuristic project of the respondent by paying an amount of Rs.30,00,000/-. On 08.03.2014, the respondent issued a payment receipt bearing no. 129 for the payment of Rs.30,00,000/-. It is important to note that no plot buyer agreement has been executed between the parties. The complainant has paid Rs.30,00,000/- as booking amount to book a plot in the futuristic project in the year 2014 but no such plot number was allotted to him. Even no completion date, no basic price was mentioned in the receipt. Thus, in view of the foregoing facts the respondent who has accepted an amount of Rs.30,00,000/- since 2014 has been in custody of the money paid for allotment of the plots and has been enjoying benefits out of it.

23. Now the question before the authority is whether the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of The Contract Act, 1872 and which provides that:

"Every promise and every set of promise forming the consideration for each other is an agreement."

24. Further, section 10 of the Act of 1872 defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

25. There are a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. The holders of those receipt/allotments are harassed a lot to act on the basis of the documents issued by the developer and has to run here and there to initiate any civil or criminal action against the builder. This position existed in Pre- RERA cases as after the enforcement of the Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.
26. Now, the issue which needs adjudication in this complaint is whether complainant is entitled to the relief of possession along with delay possession charges of plot booked by the complainant along with interest for delay in handing over the possession in absence of allotment letter and builder buyer agreement.
27. In the instant matter, even after lapse of 10.2 years from the date of payment till the filling of complaint, no allotment letter and buyer's agreement has been executed inter- se parties. Even till date, the respondent has miserably

failed to specify the project name as well as plot number where 200 sq. yards. has been allotted. Further, the respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.

28. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
29. The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253 /2018*** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**"*
30. In view of the above-mentioned reasoning, the date of making the first payment, ought to be taken as the date for calculating due date of possession.

Therefore, the due date of handing over of the possession of the unit comes out to be 09.02.2017 (three years from the date of first payment on 09.02.2014), manifesting that there has been a delay of more than 7 years in handing over possession, making the respondent liable to pay delayed interest charges as per section 18 of the Act, 2016 along with possession.

31. **Payment of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.
32. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
33. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
34. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

35. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondents/promoter which is the same as is being granted to them in case of delayed possession charges.
36. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. The possession of the subject plot was to be delivered by 09.02.2017. However, the respondents/promoter have not allotted a specific plot number to the complainants and also have failed to handover possession of the plot to the complainants till date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities to allot a specific unit number and hand over the physical possession. The authority is of the considered view that there is delay on the part of the respondents to offer of possession of the allotted plot to the complainants. Further no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
37. Further, the abovementioned issue dealt by the Haryana Real Estate Regulatory Authority, Panchkula in the case titled as *Nishant Bansal VS M/s*

Parsvnath Developers Limited decided on 11.03.2020, the following has been observed:

15. *For the reasons recorded above, the complaints are allowed and the respondent is directed to allot and deliver the possession of booked plots to the complainants in the project Parsvnath City, Sonipat on payment of balance sale consideration recoverable from them. The respondent shall comply with these directions within 90 days from the date of uploading of this order. In case the respondent due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it from the open market at his own cost. The respondent however will be entitled to recover from the complainants the balance amount payable by them as per the rate agreed by the parties at the time of booking of plots.*
38. Moreover, the respondent/applicant has filed an appeal before The Haryana Real Estate Appellate Tribunal, and the same was decided on 31.10.2022, and the Hon'ble Appellate Tribunal observed:

23. *"The submission of the learned counsel for the appellant that the directions given by the learned Authority in the impugned order that the appellant is liable to make available to the respondents/allottees plots of the size, as booked, by purchasing the same from the open market at its own costs are not feasible, is also without any substance because it is established on the record that the appellant had sold the plots which were meant for the respondents/allottees, at premium by ignoring the legitimate rights of the respondents/allottees for allotment of the plots and the appellant/promoter had earned premium by effecting the illegal sales. Once this fact has been established that the appellant/promoter by ignoring the legitimate and legal claim of the respondents/allottees, had sold the plots meant for them on premium to other persons, the learned Authority under Section 37 of the Act, is competent to issue directions as it may consider necessary.*
24. *Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondents/allottees in the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter, interest for every month of delay till the handing over of the possession, as such rate as may be prescribed. Accordingly, the respondents/allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.*

25. *Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer."*

39. In view of the reasons stated above and judgement quoted above, the respondent is directed to allot a specific plot number and issue allotment and execute the buyer's agreement of the said plot allotted to them within a period of 90 days from the uploading of this order. In case, respondent/promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, in any existing project it will be liable to make available to her a plot of the size, as booked, specifying the future upcoming project wherein specify plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
40. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 09.02.2017 till the date of offer of possession plus two months or handing over of possession, whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules. Further, the respondent shall be provided a specific plot no. in the project of the Ramparstha City and execute the agreement to sell as per prescribed format provides in the Rules of 2017, in the agreed terms contained in 2014.

F. Directions of the authority

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


- i. The respondent is directed to allot and deliver the possession of booked plot. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, he will be liable to make available to her a plot of the size, as booked, specifying the future upcoming project wherein specify plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
- ii. The respondent/promoters are directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 14.09.2009 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from 09.02.2017 till the date of order by the authority shall be paid by the respondent/promoters to the complainant within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the

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


- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent is further, directed to handover the physical possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority
- v. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

42. Complaint stands disposed of.

43. File be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.05.2024