



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1519 of 2022
Date of filing:	29.06.2022
Date of first hearing:	09.08.2022
Date of decision:	27.05.2024

Nirmala Devi W/o Sh. Hari Om Goyal
R/o House No. 34, Suvidha Kunj,
Pitampura, North West Delhi-110034.

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT

CORAM:

Nadim Akhtar
Chander Shekhar

Member
Member

Present: -

Mr. Gaurav Gupta, Counsel for the complainant through
VC
Mr. Shubhnit Hans, Counsel for the respondent through
VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 29.06.2022 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016

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

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	TDI City, Kundli , Sonipat
2.	RERA registered/not registered	Not registered.
3.	DTCP License no.	183-228 of 2004, 153-157 of 2004 and 101-144 of 2005.
	Licensed Area	927 acres
4.	Unit no.(plot)	K-533
5	Unit area	250 sq. yds.
6.	Date of booking by original allottee	17.11.2005 by paying Rs 4,37,500/-
7.	Date of plot buyer	06.09.2012

	agreement executed with original allottee	
8.	Due date of offer of possession	Not provided in agreement.
9.	Possession clause	Not available.
10.	Endorsement in favour of complainant	10.04.2019
11.	Total sale consideration as mentioned in agreement	₹ 24,03,125/-
12.	Amount paid by complainant	₹ 24,53,015/-
13.	Offer of possession	13.01.2017.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that original allottee Mrs. Suman Kawatra booked a plot bearing no. K-533, having an area of 250 sq yds in the project- TDI City, Kundli, Sonipat of the respondent in year 2005 by paying an amount of Rs 4,37,500/- on 17.11.2005. The respondent approached the original allottee after a gap of around 7 years to sign the plot buyer agreement. Total sale price of the plot was fixed at Rs 7950/- per sq. yds., totalling the sale consideration at Rs 19,87,500/- exclusive of payment of EDC and IDC. To the surprise of complainant, no certain date of delivery of physical possession of the plot was disclosed by the respondent in agreement. Owing to fact that



amount more than the agreed amount has already been paid and due to existence of threat of forfeiture of amounts paid, complainant signed the plot buyer agreement on 06.09.2012. Copy of agreement is annexed as Annexure C-1.

4. That as per settled law of this Hon'ble Authority and as well as of various Hon'ble Courts of India, where no specific date of possession is disclosed in the agreement, then a period of 3 years can be taken as a reasonable period for delivery of the possession. Accordingly, deemed date of possession works out to 07.09.2015.
5. That after signing the plot buyer agreement, the erstwhile purchaser deposited an amount of Rs 2,48,640/- on 21.07.2017 in respect of the booked plot. In this way, the total amount deposited comes to Rs 24,53,015/- against the booking. Thereafter, erstwhile purchaser due to some personal reasons, transferred her right, title and interest over the booked plot in name of complainant on 10.04.2019 which was duly endorsed by respondent at the end of plot buyer agreement. At the time of transfer, it was assured by respondent that possession will be handed over within a month or two and conveyance deed will be executed within next 3 months. Thereafter, complainant approached the respondent on several occasions at its registered office as well as at its Kundli office, but she was always turned down on one pretext or another.



6. That upon routine visits of the complainant and numerous requests, complainant was at last informed that an offer of possession vide letter dated 13.01.2017 was made to the erstwhile purchaser but actual physical possession of the plot cannot be handed over as well as its registered conveyance deed could not be executed in the complainant's name even on date due to pendency of land dispute with the land owners. Copy of letter dated 13.01.2017 is annexed as Annexure C-2.
7. That it is the case of complainant that due to excessive demands raised by the respondent, the complainant unknowingly deposited an excess amount of Rs 2,48,640/- which is evident from the statement of accounts issued to complainant. A copy of statement of account reflecting all the payments made as well as excess payment made to the respondent is annexed as Annexure C-3.
8. That owing to ulterior motives, respondent raised demands towards maintenance of the plot, without offering actual physical possession of the same and made the complainant to deposit an amount of Rs.31,860/- to the maintenance agency apart from the aforesaid amounts. A copy of statement of account of maintenance agency is annexed here as Annexure-C4.
9. That despite failure of the respondent to deliver actual physical possession of the plot and execution of registered conveyance deed in



complainant's name, respondent served a Final Statement of Account dated 14/12/2021 to the complainant wherein an amount of Rs.2,45,376/- was demanded from her on account of "Non-Construction Penalty" from 14/01/2017 to 14/12/2021 and Rs.9460/- towards "Holding Charges". A copy of Final Statement of Account dated 14/12/2021 is annexed here as Annexure-C5.

10. That in a position when the complainant is specifically informed by respondent that the actual physical possession of the plot cannot be handed over to her due to pending dispute with original land owners, no question of payment of non-construction penalty as well as holding charges arises and the same are illegally charged by the respondent which are liable to be removed. The offer of possession made vide letter dated 13/01/2017 is also a sham, served only to defeat the rights of the erstwhile purchaser as well as of complainant and cannot be considered as valid offer of possession.
11. That even for an instance, impugned offer of possession dated 13.01.2017 is considered valid, then also such penalty cannot be imposed on the complainant because as per clause 16 of the Plot Buyer Agreement, the allottee is required to start construction within a period of 3 years from the date of intimation of possession which also comes to 13/01/2020 and thereafter the entire country was under lockdown so she cannot be expected to start construction or take any



other action even otherwise. Moreover, as per clause 16 of the Plot Buyer Agreement, it is the respondent who will continue to be the owner of the plot till date registered conveyance deed is not executed in allottee's name, so in such an eventuality, the complainant cannot be expected to raise construction upon a property which does not belong to her.

12. That due to delay on respondent's part to make a valid offer of possession, the complainant has become entitled for interest on the amounts deposited by her from the deemed date of possession till the date of offer of actual physical possession. Complainant has also served a legal notice dated 05.04.2022 upon the respondent through her counsel wherein all the above mentioned facts were put before respondent but till date respondent has not replied to said notice. Hence the present complaint has been filed.

C. RELIEFS SOUGHT

13. Complainant in her complaint has sought following reliefs:
- i. The offer of possession made vide letter dated 13.01.2017 may kindly be considered as invalid and respondent be directed to deliver actual physical possession of the plot to the complainant.
 - ii. Grant of interest for delay in handing over of possession of the plot from the deemed date of possession till the date of actual physical possession as per Rule 15 of HRERA Rules.



iii. Deduction of Non-construction penalty and Holding charges, imposed by the respondent not payable by the complainant, issuance of no dues certificate and adjustment of excess amount of Rs 2,48,640/- towards future payments to be made by the complainant, if any.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 15.11.2022 pleading therein:

14. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- TDI City at Kundli, Sonipat, Haryana. Respondent company has already received part Completion Certificate in respect of 927 acres out of total 1100 acres.

- Part completion Certificate issued vide Memo No. 5DP-2007/1772 dated 23.01.2008 for land measuring 109.5 acres annexed as Annexure R-2.
- Part completion Certificate issued vide Memo No. CC-70-JE(BR)-2013/57692 dated 18.11.2013 for land measuring 415 acres annexed as Annexure R-3.
- Part completion Certificate issued vide CC-70-PA(SN)-2017/23751 dated 22.09.2017 for land measuring 573.394 acres annexed as Annexure R-4.



15. That when the respondent Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent Company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
16. That the project was completed way before the enactment of RERA Act and even the possession was offered before the enactment of RERA Act, the complainant cannot approach Ld. Authority for adjudication of its grievances. Projects which are complete or have received the completion certificate do not fall under the ambit of RERA Act as per judgment of Hon'ble Apex Court in Newtech Promoter' case. Agreement was executed on 06.09.2012, which is much prior from the date when the RERA Act came into existence.
17. That complainant herein as an investor has accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.
18. In respect of excess amount of Rs 2,48,640/-, it is stated in para wise reply that all the demands were raised in accordance of agreement and



no excess amount has been paid by complainant. Similarly, issue of non-construction penalty and holding charges has been denied by respondent. Further, it is submitted that possession has already been offered and it is the complainant who is not coming forward to accept the same.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

19. During oral arguments learned counsel for the complainant insisted upon possession of booked plot alongwith delay interest stating that respondent despite availing opportunities has not offered him actual possession of unit. He referred to order dated 05.07.2023 and 04.03.2024 to show that it is the respondent who is unable to deliver possession of plot to complainant. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that part completion certificate has already been received by respondent on 18.11.2013. However, due to dispute with land owners delivery of actual possession is not taking place. He submitted that if complainant wants respondent can refund the amount with interest. An affidavit in this regard has already been filed in registry on 24.05.2024. Further, he requested to waive off the cost of Rs 25,000/- imposed vide order dated 04.03.2024 considering the application filed for waiving off cost.



G. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled to possession of booked plot alongwith delay interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

21. 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:

(i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 06.09.2012 when the complainant was allotted plot no. K-533, TDI City, Kundli, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.*

Relevant part is reproduced below for reference:-

"52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by



necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

- (ii) The respondent in its reply has contended that the complainant is an "investor" who has invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during



the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(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;

(iii) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of builder buyer agreement dated 06.09.2012, it is clear that complainant is an "allottee" as plot bearing no. K-533 in the real estate project "TDI, City, Kundli", Sonipat was allotted to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions



provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there cannot be any party having a status of an investor. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

(iv) With respect to objection raised by respondent 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 18.11.2013. In this regard, 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.

In light of aforesaid observations, Authority observes that respondent had received part completion certificate on 18.11.2013 not the completion certificate. Moreover, the 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 has been clarified by this Authority in its numerous orders that the term 'on-going project' is only used in Section 3 of RERA Act,2016 which deals with only one of the obligation of the promoter under RERA Act,2016 i.e. to get the project registered. There are various other obligations of promoter illustrated in the RERA Act and under those provisions it is nowhere provided that those obligations are only limited to registered projects.

(v) Admittedly, complainant in this case had purchased the booking rights qua the floor in question in the project of the respondent in the year 2019 from erstwhile allottee against which an amount of ₹ 24,53,015/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 2,40,010/- was made to respondent on 21.07.2017 by the erstwhile allottee which implies that respondent is in receipt of total paid amount of Rs 24,53,015/- since year 2017 whereas



fact remains that actual physical possession of the booked plot has not been handed over to complainant till date.

(vi) In the written statement submitted by the respondent, it has been admitted that possession of the booked plot has been offered on 13.01.2017. With respect to status of handing over of possession, it is submitted that the complainant did not come forward to accept said offer. It is pertinent to mention here that in lieu of acceptance of offer complainant has made a payment of Rs 2,48,640.19/- on 21.07.2017. However, physical possession of the plot was not handed over to complainant. Feeling aggrieved present complaint was filed on 29.06.2022. Herein grievance of the complainant is that despite receipt of part completion certificate by respondent in year 2013, the respondent is not able to deliver actual physical possession of plot. Initially it was stand of respondent that no dispute/litigation is pending with original land owner farmers. In subsequent hearings, respondent submitted that certain dispute is going on with the land owners, however, no litigation/legal claim is pending before any Court/Forum. Said submissions are duly recorded in order 05.07.2023 and further respondent was directed to provide latest status report in respect of plot in question. In compliance of it, status report was filed by respondent in registry on 13.10.2023. Relevant part of said report is reproduced below for reference:-



"2. That it is submitted herein that the Respondent Company already have part Completion Certificates with respect to 927.5 acres approx. out of 1100 acres and the unit of the Complainant falls within the said area for which the completion certificate has been obtained. The said Part CC's have already been annexed with the reply as Annexure R-2 to R-4. The plot of the Complainant falls in the Part CC which was received in 2013. Photographs of Block K and its surroundings are being annexed herewith as ANNEXURE A. The said photos clearly establish the development of the site and its surroundings wherein allottees are residing also and are constructing also. Further, development works are already complete and accordingly, Part CCs were issued by the concerned department.

3. That it is being stated herein that the issue with the farmers have been resolved and the possession can be handed over to the Complainant within 45 days. It is the endeavour of the Respondent Company to offer possession at the earliest and hand over the plot to the Complainant."

Considering the status report, the Authority vide order dated 17.10.2023 had directed the respondent to offer actual physical possession of plot within next 30 days without insisting upon issue of receivables and payables. Thereafter, on next date of hearing, i.e. 04.03.2024, the Id. Counsel for complainant has stated that boundary wall of plot got constructed by complainant but the same was demolished by some person claiming to be land owner, namely, Goldy. This act raised doubts and to clarify the exact position, Id.



Counsel for respondent was directed to clarify the exact position on ground in writing. Relevant part of order dated 04.03.2024 is reproduced below for reference:-

"Ld. counsel for complainant has referred to order dated 17.10.2023 stating that complainant alongwith her son went to site and got boundary wall constructed. But said wall was demolished by some person claiming to be land owner, namely, Goldy. He further stated that respondent had made offer of plot with receivables and payables but actual physical possession of plot cannot be taken by complainant in the foregoing circumstances.

In reply, ld. counsel for respondent stated that offer with receivables and payables was issued to complainant in compliance of directions issued vide previous order. Copy of same has been filed in registry on 01.03.2024. In respect of dispute of land owners, he stated that as per his instruction there is no dispute going on with landowners qua plot of complainant.

In view of submissions of both parties, the Authority observes that the demolition of wall by some land owner raises a doubt on ownership of land by respondent. In order to clarify the exact position, ld. counsel for respondent sought time to seek instructions from his client. However, instructions did not come till exhausting of whole cause list. So, cost of Rs 25,000/- payable to Authority is imposed upon respondent for not providing proper assistance. Further, respondent is directed to clarify the exact position at ground in writing before the next date of hearing."

In compliance of order dated 04.03.2024, respondent had filed latest ground report in respect of plot in question wherein it is stated as follows:



"1. That the Respondent Company is filing the current ground status of the plot in the captioned matter in compliance of the Order dated 04.03.2024.

2. That upon instructions it is being stated that Recently farmers have created a dispute on certain area of the said project of the Respondent Company and the Plot of the complainant is also a part of it.

3. It is stated that the Respondent Company is also endeavoring to resolve the said issue at the earliest.

4. Further, it is stated that as a goodwill gesture the Respondent Company is also willing to refund the entire amount paid by the complainant".

Perusal of aforesaid report establishes the fact that actual physical possession has not been handed over to complainant till date despite receipt of part completion certificate in year 2013 and respondent even today is not in position to handover physical possession of plot due to dispute going on with original land owners/farmers. Complainant herein is waiting for lawful possession since year 2015. During all these years, respondent remained silent and did not even bother to refund the amount received from complainant towards sale consideration of plot or to make efforts to allot any other alternate plot to complainant. Now, the respondent cannot take benefit of its own wrong for causing delay in offering of possession stating that company is willing to refund the entire amount paid by complainant.

(vii) Authority observes that the builder buyer agreement has been executed between the parties on 06.09.2012. In absence of specific clause of deemed date of possession in agreement and even in



allotment letter, it cannot rightly be ascertained as to when the possession of said floor was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in **2018 STPL 4215 SC** titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the builder buyer agreement for the plot in question was executed on 06.09.2012, accordingly, taking a period of 3 years from the date of agreement i.e 06.09.2012 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 06.09.2015. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(viii) Complainant is insisting upon possession of booked plot only as alternate plot is not available with respondent. Respondent who is in receipt of total amount of Rs 24,53,015/- since year 2017 has not even made sincere efforts to provide alternate plot or refund of paid amount. It is the respondent who has failed in handing over actual possession of the booked plot till date despite receipt of part completion certificate on 18.11.2013.



(ix) In the present complaint, the complainant intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Though, the respondent was ready to refund the paid amount but complainant even in the prevailing situation, has chosen to seek possession of the plot allotted to her and is insisting upon interest for delay in handing over of possession. Section 18 (1) proviso reads as under :-

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

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

(x) The Authority observes that the respondent has severely misused its dominant position. Builder buyer agreement was executed on 06.09.2012, due date of possession as explained above is 06.09.2015. Now, even after lapse of 9 years respondent is not able to deliver physical possession to the complainant. Complainant however is interested in getting the possession of the booked plot. She do not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the



apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 06.09.2015 to the date on which a valid offer of plot in question free from all encumbrances, specifically pertaining to dispute with land owners is sent to her. In the facts and circumstances of the case, an offer will be termed as valid offer when it is possible for respondent to deliver actual physical possession of plot within 30 days of offer letter being made to complainant. Till then, the complainant is entitled to upfront monthly delay interest calculated till date of order and delay for every month further thereon till the date of valid offer.

(xi) The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

Explanation.-For the purpose of this clause-

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



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

(xii) 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. 27.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

(xiii) Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

22. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 10.85% till



and said amount works out to ₹ 22,73,354 /- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Deemed date of possession or date of payment whichever is later	Interest Accrued till 27.05.2024
1.	22,04,375/-	06.09.2015	20,88,355/-
2.	2,40,010.19/-	21.07.2017	1,78,578/-
3.	8630/-	21.07.2017	6421/-
	Total = ₹ 24,53,015.19/-		₹ 22,73,354/-
4.	Monthly interest		₹ 21,876/-

23. Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 22,73,354/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 24,53,015.19/- monthly interest of Rs. 21,876/- shall be payable up to the date of offer of actual handing over of the possession. The Authority orders that the complainant will remain liable to pay balance consideration, if any recoverable amount stands due towards total sale consideration amount to the respondent when an offer of possession is made to him.

24. In respect of relief pertaining to non-construction penalty and holding charges, it is observed by the Authority that when actual physical possession has not been handed over till date then question of non-construction penalty and holding charges does not even arise. Respondent is yet to fulfil its

duties pertaining to handover possession of plot. In respect of adjustment of excess amount of Rs 2,48,640/- towards future payments, complainant has written in pleadings that 'complainant unknowingly deposited an excess amount of Rs 2,48,640/- which is evident from the statement of account'. In said statement of account, it is written that Basic and PLC Balance-N.A. and EDC balance-Rs (-)8630 and total Balance due- Rs (-)2,48,640/-. It clearly establishes that an amount of Rs 2,48,640/- has been received in excess from complainant, i.e., over and above the sale consideration of plot as on date of issuance of said statement of account. On the other hand, respondent has not made any statement/not placed on record any justification in respect of excess amount as to how this amount was rightly taken against sale consideration from the complainant. In para wise reply, it has been stated that 'there is no excess amount paid by the complainant as being vaguely stated in the instant para'. Complainant in her complaint has sought adjustment of amount of Rs 2,48,640/- towards future payments to be made to respondent. As per record, complainant has not paid any amount towards stamp duty charges. So, respondent is directed to adjust excess amount of Rs 2,48,640/- towards stamp duty charges as and when said amount becomes payable on part of complainant.

25. Ld. counsel for complainant requested that respondent be also directed to allot any alternative unit of same size to complainant. To this, ld. counsel for respondent objected by saying that relief beyond the pleadings cannot be



awarded to the complainant. In this regard, it is observed that complainant has specifically sought relief of possession of allotted plot. There is no plea w.r.t allotment of any alternate unit in complaint. Moreover, it is the stand of the respondent that no alternate plot/un-allotted plot is available with company. In these circumstances, the request of complainant's counsel cannot be accepted.

26. Further, an application seeking waiving of cost of Rs 25,000/- imposed by the Authority vide order dated 04.03.2024 was filed by respondent in registry on 24.05.2024 stating that vide order dated 04.03.2024 respondent was directed to provide exact status of plot in question on ground. It is stated that counsel for the respondent was unable to reach out to the concerned official of the respondent company on same date, i.e., 04.03.2024 and therefore the directions of the Authority could not be complied with. In this regard, it is observed that respondent initially took a stand that plot in question is available for handing over of possession as recorded in order dated 04.03.2024. When complainant visited the plot and got boundary wall constructed then wall was demolished by land owner. Assurances rendered by respondent company made complainant to suffer even more. Then, respondent was again asked to clarify the exact status at ground for which ld. Counsel for respondent sought pass over but did not mention/appear till the exhausting of cause list. In this manner, respondent company did not provide proper assistance to Authority and got the matter



delayed for another hearing. Hence, the request of respondent to waive off the cost is rejected and respondent is directed to deposit the same.

I. DIRECTIONS OF THE AUTHORITY

27. 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 to the Authority under Section 34(f) of the Act of 2016:


- (i) Respondent is directed to pay upfront delay interest of Rs 22,73,354/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of Rs. 24,53,015/- monthly interest of Rs 21,876/- shall be payable by the respondent to the complainant up to the date of offer of actual handing over of the possession. Respondent is also directed to expedite the process of resolving the dispute with land owners.
- (ii) Complainant will remain liable to pay balance consideration amount, if any amount still remains recoverable on part of respondent at the time of possession offered to her after.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e, 10.85% by the respondent/ Promoter which is the same



rate of interest which the promoter shall be liable to pay to the allottees.

(iv) Respondent is directed to adjust excess amount of Rs 2,48,640/- towards stamp duty charges as and when said amount becomes payable on part of complainant. Respondent is also directed to pay cost of Rs 25,000/- payable to Authority in compliance of order dated 04.03.2024 within 15 days of uploading of this order.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]