

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

Complaint no. :	664 of 2019
Date of complaint :	11.02.2019
Order pronounced on:	20.02.2024

M/s Alta Vista Info Solutions Pvt. Ltd.
(Formerly known as M/s Combitic Global Pharma Pvt. Ltd.)
Regd. Office at: - 17, New Rohtak Road, Karol Bagh,
New Delhi-110005.

Complainant

Versus

M/s Haryana State Industrial & Infrastructure Development
Corporation Ltd.
Regd. Office at: - C13-14, HUDA Complex, Sector 6,
Panchkulla-134109.
M/S Department of Industries & Commerce, Haryana.
Regd. Office at:- 1st floor, 30 Bays Building, Sector 17,
Chandigarh

Respondents

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member

Member

Member

APPEARANCE:

Ms. Nidhi Jain
None

Complainant
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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Prestigious Projects, for "Information Technology (IT)- enabled services", Sector 35, Gurugram.
2.	Payment Plan	Installment linked plan (Annexure C-7 on page no. 38 of the complaint)
3.	Provisional allotment letter dated	09.09.2008 (Annexure C-5 on page no. 31 of the complaint)
4.	Regular letter of allotment (RLA)	07.11.2008 (Annexure C-7 on page no. 36 of the complaint)



5.	Date of execution of agreement and acceptance of RLA	10.12.2008 (Annexure R-5 on page no. 27 of reply)
6.	Plot no. as per the allotment letter	Plot no. 51, Sector 35, Gurugram measuring 3,305 sq. mtr. 5 th Floor, Tower-T4 (Annexure C-5 on page no. 31 of the complaint)
7.	Revised plot no.	Plot no. 1, sector 34, Gurugram measuring 2676 sq. mtr. Because Rate of industrial plot is revised from Rs. 8000/- to Rs. 15000. (Annexure C-28 on page no. 88 of the complaint)
8.	Possession clause	Clause VII of the RLA <i>Although physical possession of the aforesaid plot shall be offered by the Corporation upon completion of minimum required infrastructure facilities in the area, it is however, made clear that even after offer of physical possession of plot to you, the same shall be delivered to you only after having executed an agreement by you with HSIIDC.</i> (Page no. 38 of the complaint)
9.	Due date of delivery of possession	No date is specified in RLA (Clause VII of RLA)
10.	Completion certificate	-----
11.	offer of possession	06.01.2021



12.	Total consideration	Rs. 4,01,40,000/- (Annexure C-29 on page no. 89 of the complaint)
13.	Total amount paid by the complainant	Rs. 4,05,91,193/- (As alleged by the complainant on page no. 15 of the complaint and agreed by the respondent)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant, by application dated 16.01.2008, received by the HSIIDC applied for allotment of 8000 sq.mtrs. Industrial plot at Sector 34-35, Gurgaon, Haryana with HSIIDC, under category of "Prestigious Projects. Along with the application dated 16.01.2008, the company annexed application form dated 15.01.2008, DD amounting Rs. 60,00,000/- in favour of HSIIDC as initial payment i.e., 10% of total sale consideration of plot applied for allotment all requisite documents, project report etc. as per instruction of HSIIDC.
- II. That vide letter dated 21.07.2008, the office of AGM, HSIIDC informed to appear before Higher Level Plot Allotment Committee, under Chairmanship of Commissioner & Secretary Industries, Haryana, was to be held on 06.08.2008 in the office of HSIIDC at plot no.C-3-14, Sector-6, Panchkula, for considering the cases of allotment of industrial plot with proposed investment of 30 Cr. and above.
- III. That the complainant, through its Director Mr. Pavel Garg, appeared for personal interview before plot allotment committee on the given date and time. At the time, the complainant was informed by the office of



- AGM, HSIIDC that the rate of industrial plot in Gurgaon (Sector 34-35) is revised from Rs.8,000/- to Rs.15,000/- per Sq. Mtrs. for consideration of allotment of plot by appearing before allotment committee.
- IV. That now vide letter dated 09.09.2008, the office of HSIIDC informed the complainant that it has decided to allot industrial plot no.51, Sector-35, Gurgaon, measuring 3305 sq. meters (tentative size) at tentative rate of Rs.15,000/- per sq. mtrs. In this way, the tentative total sale consideration of the plot having size of 3305sq.mtrs @ Rs.15,000/- per sq. mtrs., proposed to be allotted to the complainant, comes to Rs.4,95,75,000/-. It was further directed to submit undertaking to implement the project within a period of 3 years from the date of allotment and to pay balance application money on account of 10% cost of plot, if any. It was also stated that regular letter of allotment containing terms & conditions of allotment would be issued thereafter.
- V. That now vide letter dated 16.09.2008, it was informed by the complainant to the office of HSIIDC that it has already deposited excess money on account of 10% of cost of plot as application money; as the complainant had already deposited Rs.60,00,000/- against the total value of plot of Rs.49,58,0000/- for a plot of 3305 sq. mtrs.
- VI. That a regular letter of allotment dated 07.11.2008 was issued along with terms & conditions as well as letter of acceptance, with stipulations that the total 35% of total price is payable within 30 days and remaining 65% shall be payable in 5 six monthly instalments of Rs.64,44,750/-, starting from offer of possession, with schedule starting from 07.05.2009 till 07.05.2011. It was further stipulated that any delay would attract the interest @ 14% p.a., on such delayed period. In pursuance to the RLA, acceptance of regular letter of allotment dated



- 02.12.2008 with agreement dated 03.12.2008, on the format provided by the HSIIDC, were executed by the complainant. The total amount of Rs.1,13,66,250/- was paid by the complainant on 03.12.2008. Hence, the total amount of Rs. 1,73,66,250/- was deposited by the complainant.
- VII. That now vide letter dated 20.11.2008, it was informed by the HSIIDC that allotment is being done without physical possession and further that the physical possession would be offered in due course on completion of basic infrastructure facilities, which includes provision of road, availability of water supply, sewerage facility and electrical infrastructure. It was further stipulated in the said letter that HSIIDC will not charge any interest during the intervening period. Further it was also specifically stipulated that the schedule for construction/ implementation of the project with minimum investment of Rs.30 crore, shall also be applicable from the date of offer of possession by the corporation.
- VIII. That the complainant had planned to set up unit immediately on taking possession of the plot. The undertaking was sought by the HSIIDC and accordingly the undertaking to set up the unit was given by the complainant. Considering the delay in development by the HSIIDC, and that the HSIIDC even failed to give any firm date of possession of the plot in question, the complainant had requested the HSIIDC, vide letter dated 17.01.2009, to allot the alternate plot to enable the complainant to set up the unit as the complainant intended to set up the unit immediately, for which the plot in question was applied by the complainant.
- IX. That vide its letter dated 24/02/2009 (Annexure-C/12), the HSIIDC has directed the complainant to visit its office for change of plot and



accordingly, the complainant had visited the office of HSIIDC. During such visit, after discussion with the MD, HSIIDC, the complainant gave representation to MD, HSIIDC, vide letter dated 17.03.2009. The HSIIDC did not consider the request of complainant.

- X. That without considering the request of the complainant as well as without any offer of possession, the HSIIDC, vide letter dated 28.10.2009, asked the complainant to deposit the instalment with interest. But the complainant, vide letter dated 02.11.2009 clarified that in terms of Para 2 clause (v) of the RLA dated 07.11.2008, the instalment and interest is payable only from offer of possession. The same was again clarified vide letter dated 01.12.2009, annexed as Annexure-C/16.
- XI. That ignoring and mis-interpreting the terms and conditions of the RLA as well as the repeated representations given by the complainant, the HSIIDC again, vide letter dated 02.12.2009, asked the complainant to deposit the instalment with interest, falling due on 07.05.2009 and 07.11.2009.
- XII. That the complainant again send the letter dated 21.12.2009, on the similar issue, clarifying that as per the para 2 clause (v) of the original draft of RLA dated 07.11.2008 the instalments with interest will become due from the date of offer of possession only and that no possession has been offered till date. But the HSIIDC continued demand of instalment, without offer of possession, vide letter dated 27.01.2009. Under such circumstances and pressure, the complainant deposited the amount of Rs.1,28,89,500/-.
- XIII. That the HSIIDC, vide letter dated 17.03.2010, asked to pay the interest on account of delay of instalment. It was demanded without offer of any possession of the plot in question. The complainant, vide letter dated



27.03.2010, again clarified the issue of interest which was not payable as the possession of the plot was not offered till the date and requested the MD, HSIIDC to waive the interest as payment of instalments have not fallen due before possession of the plot.

- XIV. That towards 3rd instalment, the complainant again deposited the amount of Rs.64,44,750/-. But vide letter dated 18.06.2010, the HSIIDC had intimated that it has adjusted the amount of Rs.10,50,860/- as interest. Against such levy of interest, the complainant again, vide letter dated 26.06.2010, clarified the issue of interest as the HSIIDC was taking benefit of its own wrong in charging the interest though it could not develop the site and failed in offering the possession of the plot but there was no response from the HSIIDC.
- XV. That under such compelling circumstances, the complainant, vide letter dated 30.06.2010 (Annexure-C/27), requested the HSIIDC to allot the plot no.1, Sector-34, Gurugram of smaller size in lieu of plot no.51, Sector-35, Gurugram. Now vide letter dated 02.07.2010, the HSIIDC accepted the request of complainant to allot the plot no.1 measuring 2676 sq. mtrs. Sector-34, Gurgaon; in lieu of plot no.51 measuring 3305 sq. mtrs., sector-35, Gurgaon. Now for such plot of 2676 sq. mtrs., the total sale consideration was reduced from the amount of Rs.4,95,75,000/- to Rs.4,01,40,000/-. The re-schedulement letter dated 14.07.2010, in respect to new allotted plot no.1, was issued by the HSIIDC. By way of this re-schedulement letter dated 14.07.2010, the HSIIDC imposed the interest of Rs.4,36,193/- on account of alleged delay of payment. The HSIIDC committed illegality by demanding interest as the interest was not payable because neither the possession of plot was offered nor the credit of interest on excess amount already



deposited was granted. However, after imposing the illegal interest, the HSIIDC, finally demanded the amount of Rs.38,90,693/-, payable until 07.05.2011.

- XVI. That the interest and instalments were not payable at all because the entire fault was of HSIIDC as the HSIIDC failed to develop and offer the possession of plot. But still under dominance of HSIIDC and under compelling circumstances, the complainant company deposited the final demanded amount of Rs.38,90,693/-. In this way, the total amount of Rs.4,05,91,193/- was deposited by the complainant.
- XVII. That without offering any possession and without completion of development of the industrial estate where the allotted plot was located, the HSIIDC, vide letter dated 06.07.2017, sought clarification over steps for project implementation. While issuing such letter in stereotyped manner, the HSIIDC ignored and overlooked that the possession of plot has not been offered to the complainant till date. The complainant, vide letter dated 02.08.2017, requested to issue letter of offer of possession and also to give credit of interest for delay in offer of possession.
- XVIII. That the total sale consideration of plot no.51, Sector-35, Gurugram was Rs.4,95,75,000/- which was reduced to Rs.4,01,40,000/-, against which the complainant has paid an amount of Rs. 4,05,91,193/-.
- XIX. That the HSIIDC failed to respond the letter dated 02.08.2017 and rather, the HSIIDC committed illegality and unfair practice which is clearly evident as HSIIDC vide letter dated 08.09.2017, stipulated that there is still outstanding of Rs.629/- and further that on non-payment of dues, the plot is liable to be resumed. Though the entire payment, as per own demand of HSIIDC was deposited by the complainant company



long back alongwith all the interest as imposed but still it was quite illegal, unreasonable, unfair and unequitable to stipulate that on account of alleged outstanding of Rs.629/-, the plot is liable to be resumed. The complainant, vide letter dated 20.09.2017, informed the HSIIDC that the full and final payment was deposited till 03.05.2011, though no possession has been offered. However, the complainant submitted the PO of Rs.2,000/- towards alleged demand of Rs.629/- and rest for unknown costs/dues in future, if any. The complainant again requested to issue offer of possession of the plot so that the complainant company could start its project with immediate effect. But there was no response from HSIIDC nor was the possession of plot offered.

- XX. That vide letter dated 15.11.2018, the complainant again requested the HSIIDC to offer the possession of plot after completion of all basic infrastructure at site and to pay interest on account of delay in offer of possession.
- XXI. That ignoring its own letter dated 20.11.2008, wherein it was informed by the HSIIDC that allotment is being done without physical possession and further that the physical possession shall be offered in due course on completion of basic infrastructure facilities, which includes provision of road, availability of water supply, sewerage facility and electrical infrastructure, the HSIIDC vide letter dated 07.12.2018, asserted that road and water supply line is complete/available for plot in question but the sewer connection should be released after completion/occupation certificate. In the said letter, the HSIIDC totally remained silent on the issue of development of mandatory electrical infrastructure as well as on the issue of offer of possession of plot. The HSIIDC even failed to inform the expected time for obtaining the



mandatory occupation certificate of industrial estate where the plot in question was located.

XXII. That further the HSIIDC, ignoring its own letter dated 20.11.2008, wherein it was informed by the HSIIDC that allotment is being done without physical possession and the schedule for construction / implementation of the project with minimum investment of Rs.30 crore, shall also be applicable from the date of offer of possession by the Corporation, the HSIIDC vide letter dated 31.12.2018, referred and reiterated the Amnesty Scheme vide Circular passed in pursuance to BoD / HSIIDC 346™ meeting held on 29.08/2018.

XXIII. That till date, the HSIIDC failed to offer the possession of plot in question hence, it can be safely stated that the HSIIDC failed to develop and obtain the mandatory occupation certificate of the industrial estate where the plot in question is situated. Hence, the HSIIDC has committed the deficiency and illegality, under such circumstances, the complainant company is entitled to the damages / interest @ 14%, on equity basis and also entitled to exit its unit from the category of 'Prestigious Projects', without any fee / penalty, due to deficiency and illegality committed by HSIIDC, as there is already huge delay in developing and giving the offer of possession of plot which has not been done even till today, so due to lapse of such long time, under the changed circumstances, the cost and plan of project is bound to be changed

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to give possession and execution of title deed in respect to plot no. 1, sector 34, measuring 2676 sq.mtrs.



II. Direct the respondent to pay the statutory compensation in the form of interest, on amount deposited from their respective deposits till offer of possession, in the interest of justice.

Direct the respondent to convert its unit under category of regular projects from the category of Prestigious Projects, without any fee/penalty in the interest of justice..

III. Direct the respondents be further directed to refund the interest of RS. 4,51,193/- illegally imposed upon the complainant.

D. Reply by the respondent/builder.

5. The respondent has contested the complaint by filing reply on the following grounds: -

i. It is submitted that the complainant company applied for an industrial plot measuring 2 acres (8000 sqm.) size in the Industrial estate at Sector-34, Gurugram Vide application dated 16.1.2008 for setting up a project of IT/IT enabled services (ITES) under prestigious category with a proposed investment of Rs. 52.03 crores along with a Demand draft of Rs. 60,00,000/- on account of application money/10% of tentative plot cost including Rs. 15000/- as processing fee.

ii. It is submitted that the complainant company was informed that the State Government, after consideration has decided to revise the rate of industrial plot Gurugram (Sector-34-35), from RS. 8000/- to Rs. 15,000/- per sqm. with immediate effect. Keeping in view the revision of rate of industrial plots, the complainant company was given following two options which reads as :

a. To opt out of scheme for allotment of plot: in case you opt not to participate in the allotment process your application money as well as processing fee will be refunded with interest @ 10% per annum for the period the amount remained credited with HSIIDC.



- b. To opt for consideration of allotment of plot and to appear before the Allotment Committee: In case you are interested to be considered for allotment of plot, the revised rate as mentioned above shall be applicable. In case, you are not successful, the application money (without interest and processing fee) shall be refunded to you, as per the existing policy of the Corporation.
- iii. That allotment committee of the corporation in its meeting held on 6.8.2008 and industrial plot no. 51, sector-35, Gurugram measuring 3305 sqm at the tentative rate of Rs. 15,000/- per sqm. Was allotted to complainant-company. The decision of the committee was informed to the complainant company vide letter dated 9.9.2008 (**Annexure R/2**), complainant company was also asked to submit an undertaking and to remit balance application money if any so that Regular Letter of Allotment may be issued. Vide letter received on dated 22.9.2008, complainant company submitted an undertaking/affidavit dated 16.9.2008 (**Annexure R/3**), wherein complainant company agree and undertake that:
- (i) That we want to take physical possession of the said plot on "as is where is basis" as we want to set up the project on the said plot at the earliest possible, without the development work completed by HSIIDC.
- (ii) That in the absence of complete development work/infrastructure facilities (like Power, road, water Supply, Sewerage etc.) we would not lodge any claim whatsoever against HSIIDC



- (iii) That the Implementation period of three years shall be counted from the date of offer of physical possession to us by the HSIIDC. Further, we also agree that the payment towards the cost of plot shall be paid by us in lumpsum (within 60 days) or in installments with interest @ 11% on the outstanding amount from the date of offer of possession. That we undertake to implement the project with minimum investment of Rs. 30 Crores in the project in the form of fixed assets, within the aforesaid three years period.
- (iv) That we will not bore tube well for drawing water without permission and we will make own arrangements for water through tankers from outside for construction of building.
- (v) That we hereby undertake that we shall be covered under provisions of Industrial Policy-2005 of Haryana-Govt. and Estate Management Procedures-2005 of HSIIDC.
- (vi) That we hereby accept that the aforesaid allotment shall be made at tentative allotment rate of Rs. 15000/- per sqm.
- iv. That regular letter of allotment without offer of possession for allotment of plot no. 51 Sector-35, Gurugram measuring 3305 sqm. was issued to the complainant company on 7.11.2008 (**Annexure R/4**) and an agreement was also executed by the complainant company with corporation on dated 10.12.2008 (**Annexure R/5**), **wherein schedule of the payment of the remaining 65% tentative price of the plot was given without imposing any interest.** The complainant company required to remit the balance 65% tentative price (Rs. 3,22,23,750/-) in five equal half yearly installment of Rs. 64,44,750/- each with due date as 7.5.2009, 7.11.2009, 7.5.2010, 7.11.2010 & 7.5.2011 without any interest and in case complainant



- company failed to remit the payment on aforesaid due date only then complainant company shall be liable to pay interest for delayed period.
- v. That it is submitted that the complainant company misinterpreted the contents of letter dated 20/11/2018 and it is further submitted that the complainant was liable to pay the delay interest only in case it failed to remit the installments of plot cost on due date mentioned in RLA/agreement executed by the complainant.
- vi. That It is submitted that the complainant misinterpreted the terms and conditions of RLA and again made a representation dated 21/12/2009 against the demand raised by the Respondent No.1. Thereafter, the Respondent no.1 replied to the representation made by the complainant in which it was clearly mentioned that the interest on the outstanding amount is applicable in cases where physical possession of the plot is offered by the corporation in favour of the allottee. Since the physical possession of the plot in Sector-34 & 35, Gurugram has not been offered till date, therefore, no interest has been charged. However, the amount of principal amount is to be paid as per schedule without the interest component. Further, in case of default in payment of installments on due dates, interest @ 14% per annum was also required to be paid by the complainant for the delayed period.
- vii. That it is submitted that the office of respondent never received the letter dated 27/03/2010 from the complainant. However the complainant be directed to prove the averments made by him through cogent and coherent evidence.
- viii. That the corporation also announced an amnesty scheme for all the allottees of the industrial plots allotted under prestigious category to opt for Exit Route” under clause 5.8 v of EMP-2015. The aforesaid



scheme was informed to the to the complainant company on 25.10.2018 & 31.12.2018 (**Annexure R/11**) along with copy of operational circular of the scheme. However, it is pertinent to mentioned here that the aforesaid scheme was not applicable in case the plot is lying vacant and as complainant failed even to start the construction activities therefore the complainant is not eligible for the aforesaid scheme as per the EMP – 2015.

6. All other averments made in the complaint were denied in toto.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

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

8. 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

9. 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.

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

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to deliver the possession of the allotted unit and pay the delay possession charges along with prescribed rate of interest.

II.Direct the respondent to pay the statutory compensation in the form of interest, on amount deposited from their respective deposits till offer of possession, in the interest of justice.

III.Direct the respondents be further directed to refund the interest of RS. 4,51,193/- illegally imposed upon the complainant

The above mentioned reliefs no. F.I, F.II, & F.III as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

11. The complainant allottee filed the present compliant on 11.02.2019 and the same was disposed off on 18.12.2019 wherein it was held that this authority doesn't have jurisdiction to adjudicate the present matter as the allotment of the subject plot was done by the respondent in the year 2008. Further, the complainant was advised to approach the Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh.
12. However the complainant allottee preferred an appeal against the said order of this authority and in consequence of it, the Hon'ble Appellate Tribunal allowed the said appeal and set aside the impugned order dated 18.12.2019 passed by this authority. The operative part of the order of the Appellate Tribunal dated 14.10.2020 is as under:-

"The relevant provisions of the Act have come into force w.e.f. 01.05.2017. On that date, there was no motorable road in front of the plot of the appellant, there was no water supply system and the sewerage disposal network is not yet complete. The physical possession of the plot has not been offered to the appellant even today. So, we are of the considered opinion that the provisions of the Act have become applicable to the project in question and the learned authority was required to adjudicate the complaint filed by the appellant on merits. The view taken by the learned authority that it has no jurisdiction as the allotment was made in the year 2008, is totally erroneous as the respondents/promoter have yet to fulfill their obligations. Consequently, the impugned order cannot be sustained in the eyes of law.

Thus, keeping in view our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated 18.12.2019 passed by the learned Authority is hereby set aside. The case is remanded to the

learned Authority for adjudication of the complaint filed by the appellant on merits".

13. The matter was remanded back by the Appellate Tribunal with the directions to both the parties to appear before the Authority on 02.11.2020. Both the parties were issued notices for appearance and matter has been heard at length.
14. The complainant applied for allotment of Rs. 8,000/- sq.mtrs, industrial plot at sector-34, Gurgaon, Haryana under category of 'prestigious projects' for 'Information Technology (IT) & IT enable services. On 21.07.2008, the office of AGM, HSIIDC informed the complainant to appear before the plot allotment committee for considering the case of allotment of industrial plot. The complainant appeared before the committee and vide letter dated 09.09.2008, the respondent-corporation issued allotment letter of plot no. 51, sector-35, Gurgaon measuring 3305 sq. mtr. at tentative rate of Rs. 15,000/- per sq. mtr (total sale consideration is Rs. 4,95,75,000/-)
15. The complainant states that there is delay in development by the HSIIDC, even HSIIDC failed to give any firm date of possession of the plot in question. Further, the instalment and interest which was to be paid at the time of offer of possession, was demanded even before that. The HSIIDC sent various reminders letters to the complainant to pay the instalments and interest on account of delay deposits of instalment without offer of possession of the plot in question. On the contrary, the respondent-corporation states that the complainant-company on 7.11.2008 (Annexure R/4) and an agreement was also executed by the complainant company with corporation on dated 10.12.2008 (Annexure R/5), wherein schedule of the payment of the remaining



- 65% tentative price of the plot was given without imposing any interest. The complainant company required to remit the balance 65% tentative price (Rs. 3,22,23,750/-) in five equal half yearly installment of Rs. 64,44,750/- each with due date as 7.5.2009, 7.11.2009, 7.5.2010, 7.11.2010 & 7.5.2011 without any interest and in case complainant company failed to remit the payment on aforesaid due date only then complainant company shall be liable to pay interest for delayed period.
16. Consequently, on 30.6.2010, the complainant requested the HSIIDC to allot an alternative plot, namely plot no. 1, sector 34, Gurugram, Haryana. HSIIDC accepted this request via letter dated 2/7/2010, allotting plot no. 1 measuring 2676 sq.mtrs. in lieu of plot no. 51, with the revised total sale consideration of Rs. 4,01,40,000/-. After the change of plot number, the re-schedulement of the balance principal cost of plot without any interest was also conveyed to the complainant-company.
17. It is important to note that a undertaking given by the complainant-allottee dated 16.09.2008 before the regular letter of allotment dated 07.11.2008 wherein the complainant has undertaken to accept the plot on "as in where is basis" and agreed not to lodge any claim against HSIIDC, which is reproduced as below:
- 1. That we want to take physical possession of the said plot on "as is where is basis" as we want to set up the project on the said plot at the earliest possible, without the development work completed by HSIIDC*
 - 2. That in the absence of complete development work/infrastructure facilities (like Power, Road, Water Supply sewerage etc.) we would not lodge any claim whatsoever against HSIIDC.*



18. Subsequently, the complainant vide letter dated 30.06.2010 voluntarily requested a plot change from allotted plot no. 51 of sector 35 to plot no. 1 of sector 34. Which is reproduced below as:

In continuation of our letter dated 26.06.2010 it is further submitted that we came to know that Plot No.1 at Sector 34, Gurgaon is vacant and you are hereby requested to allot the same plot to us in lieu of our old plot No. 51 at Sector 35, Gurgaon

19. The said request of the complainant vide letter dated 30.06.2010 was accepted by HSIIDC on 2.7.2010 by stating that " *In this regard, I am directed to say that your request for change of plot allotted by HSIIDC in Sector 35, Gurgaon has been considered and it has been decided to allot Plot no.1, Sector 34, Gurgaon measuring 2676 sq. mtr. in lieu of Plot No.51, Sector 35, Gurgaon measuring 3305 sq. mtr. The other terms and conditions of the allotment shall remain unchanged. The reschedulment of the amount to be paid by you towards the cost of the plot shall be conveyed by the Estate Manager, Udyog Vihgar, Gurgaon separately.*" Possession of the unit was offered on 06.01.2021, with an obligation on the respondent to obtain an occupation certificate as per clause 10 of the RLA, the same is reproduced below:

10. That the allottee shall apply for an occupation certificate in the concerned filed office of HSIIDC Further, Further the procedure to grant occupation certificate shall be governed by the rules & regulations of Department of Town & Country Planning, Haryana, as amended from time to time."

20. After consideration of all the facts and circumstances, the authority is of view that the reliefs of delay possession interest is declined in view of the undertaking given by the complainant to accept the plot on "as is where is basis" and voluntary change of allotted plot no 51 of sector 35 to plot no. 1 of sector 34. Further the complainant has taken a plea that

the respondent demanded the interest on delayed instalments which was to be paid at the time of offer of possession. It is important to note that the respondent was required to remit the balance 65% in five equal instalments without any interest. However, in case complainant failed to remit the payment in time then complainant would be liable to pay interest for the delayed period. The respondent has charged interest from the complainant on account of payment delayed by the complainant as per the payment plan agreed in the RLA. Therefore, the reliefs against the respondents in this regard are not admissible.

IV. Direct the respondent to convert its unit under category of regular projects from the category of Prestigious Projects, without any fee/penalty in the interest of justice.

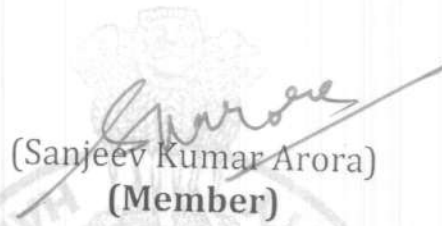
21. The complainant took a plea that it was allotted subject unit under the category of prestigious projects. The complainant requested the HSIIDC to change the category of the project from prestigious to general projects but the respondent did not pay any heed to the complainant. On the contrary, the respondent builder states that the complainant should file the application before the appropriate authority for changing of category of the projects from the prestigious project to the general projects.
22. The authority is of view that the exit route for the allottees of prestigious projects category has specifically been mentioned in the 5.9(b)(v) of the EMP-2015. The complainant allottee may accordingly opt the mentioned exit route by making a representation to the competent authority as per the provision of industrial policy of 2005 of Haryana Government. The competent authority may to decide the matter within the period of 3 months from the date of this order as per applicable provision of the policy.



G. Directions of the authority

23. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is not admissible and the same is hereby ordered to be rejected.
24. Complaint stands disposed of.
25. File be consigned to registry.


(Ashok Sangwan)
Member


(Sanjeev Kumar Arora)
(Member)


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Date: 20.02.2024