



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1844 of 2022
Date of filing:	29.07.2022
First date of hearing:	28.09.2022
Date of decision:	08.07.2024

Vinay Gupta

S/o Sh. Ram Kishan Gupta

R/o D-1/18, First Floor,

Model Town-2, New Delhi-110009

.....COMPLAINANT

Versus

**M/s Haryana State Industrial & Infrastructure
Development Corporation Ltd.**

Registered Office: C13-14, HUDA Complex,

Sector-6, Panchkula-134109

(through its Managing Director)

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Hearing: 7th

Present: - Adv. Vikasdeep, Counsel for complainant through VC.

Adv. Neetu Gupta, proxy counsel for Mr. Tarun Gupta counsel of respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 29.07.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 RERA, 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 and location of the project	"Mega Food Park", at Rai Industrial Area, Sonapat (Haryana)
2.	Name of the promoter	M/s Haryana State Industrial & Infrastructure Development Corporation Ltd.

3.	RERA registered/not registered Unit No.	unregistered
4.	Nature of the project	Industrial
5.	Plot No.	Plot No.2259, Sector-38, Phase-2, Mega Food Park, Rai, Sonapat
6.	Plot area (Super area)	1800 Sq. mtrs.
7.	Date of regular letter of allotment	05.12.2018
8.	Deemed date of possession	05.12.2021 (3 years from the date of issuance of Regular Letter of Allotment i.e. 05.12.2018 as ascertained in para 33 of the order)
9.	Total sale consideration	₹67,320,000/-
10.	Amount paid by complainant	₹35,92,000/- (RTGS challan attached)

B. FACTS OF THE COMPLAINT

1. Present case of the complainant is that complainant participated in e-auction for allotment of industrial plot measuring 1800 Sq. Meters, in Mega Food Park, at Rai Industrial Area, Sonapat, vide Application ID No.N2018AUG13692, and also deposited the required application money of Rs.35,92,000/- through RTGS on 02/08/2018. The copy of the challan dated 02/08/2018 is annexed as "Annexure-C-1". As per terms and conditions for online auction of industrial plots/sheds, the allotment was to be made in



- accordance with Industrial Policy of State of Haryana, i.e., EPP- 2015 and EMP-2015.
2. Complainant became successful bidder for the industrial plot bearing no.2259, HSIIDC, Sector-38, Phase-2, Mega Food Park, Rai, Sonapat, measuring 1800 Sq. Meters in e-auction held on 13.09.2018. Though the complainant placed a bid of ₹26,400/- PSM and selected one (1) in the section of number of increments, i.e., Rs.100/- per Sq. Meters, but due to some technical error on the web-site / e-auction portal of the respondent, the bid of the complainant was shown as ₹37,400/- PSM. Such fact of offer price and that of technical fault is also evident from the fact that the respondent got deposited an amount of ₹35,92,000/-, as application money which was stated to be as 10% tentative.
 3. That the complainant immediately notified such technical fault, to the knowledge of respondent, vide his e-mails dated 14.09.2018 and 18.09.2018. On the captioned issue of such technical fault, the respondent invited the complainant for personal hearing, vide its mail dated 14.11.2018, asking the complainant to appear with all supporting documents, before the respondent on 16.11.2018. But the complainant could not appear due to such short time given. However, the complainant had already supplied all relevant documents in support of his case and contentions and the same were liable to be decided



in absence of complainant but no such decision was ever communicated by the respondent. Copies of email dated 14.09.2018, email dated 18.09.2018 14.11.2018 are collectively annexed as "Annexure-C-2."

4. That para 2.2 (ii) of EMP-2015, stipulates that the plots to Mega Projects will be allotted at a promotional price. However, the allotment of plot at the offered price to the complainant also seems to be difficult due to such illegality committed by the respondent.
5. That the respondent issued a Regular Letter of Allotment (RLA) dated 05.12.2018 alongwith Format of Agreement as well as Letter of Acceptance, in respect of the allotted plot, i.e., industrial plot No.2259, HSIIDC, Sector-38, Phase-2, Food Park, Rai, Sonapat, measuring 1800 Sq. Meters, which are collectively annexed as Annexure-C-3.
6. That it was mentioned in the terms of payment that the complainant is required to deposit 15% price of the plot within 30 days of issuance of Regular Letter of Allotment so to make it 25%, after including Rs.35,82,000/- as already deposited at the time of application money. Another amount of 25% was to be deposited within 60 days from issue of RLA and balance amount of 50% was to be paid within 90 days from the date of issuance of RLA. It was further stipulated that in case, such Letter of Acceptance is not



submitted and further amount is not paid, the case shall be dealt as per provisions of Estate Management Procedure-2015.

7. It is clear case where respondent is at fault and still taking benefits of its own wrongs. As mentioned in the on-going complainant, an Electric Pole was installed inside the plotted area of the complainant. Hence, offer of alleged possession and issuance of RLA are void ab-initio and have no relevance.
8. That the complainant immediately brought this discrepancy/ deficiency to the knowledge of respondent. Emails dated 07.12.2018 and 13.12.2018, letter dated 06.01.2019, email dated 21.02.2019 were served by the complainant requesting the respondent not to charge the amount and also to defer the RLA, until High-Tension Electric Wire & Pole are removed from the plot booked by the complainant. Under such circumstances, complainant was not liable to make any further payments. E-mails dated 07.12.2018, 13.12.2018, 21.02.2019 and letter dated 06.01.2019, are collectively annexed as "Annexure-C-4".
9. That the action of the respondent in issuing the RLA and issuing schedule of payments is totally illegal, arbitrary, unjustified and against the policy of the State Government. In *Krishna Swami Vs. Union of India 1994 SC Page 140*, the Hon'ble Supreme Court observed that, "Rule of law require that any



action or decision of a statutory or principal authority must be founded on the reason stated in the order borne out from the record."

10. That after removal of the high-tension electric wire & pole, complainant requested the respondent to issue the demand letter for re-scheduling the instalments and also time period for implementation of the project. E-mails dated 23.04.2019, 12.05.2019, 01.07.2019, 11.07.2019, 30.08.2019 and 04.09.2019 are referred to which are collectively annexed as Annexure-C-5.
11. That in response of all such emails / reminders, respondent had written only a letter dated 13.09.2019, annexed as "Annexure-C-6", asking to deposit the payments with interest and penalty, without considering that the respondent itself is at fault. Such illegal demand was protested by the complainant, vide letter dated 19.09.2019 and also by letter dated 20.09.2019, annexed as "Annexure-C-7".
12. That the act of respondent is in violation of principle of promissory estoppel and legitimate expectation. Same has been held by the Hon'ble Supreme Court in the case of *M.P. Oil Extraction and Anr. v. State of M.P. and Ors.* (1997) 7 SCC 592, that *"The doctrine of legitimate expectation' has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in appropriate case,*



constitutes a substantive and enforceable right." In Navjyoti Co-op. Group Housing Society v. Union of India AIR 1993 SC 155, the Hon'ble Supreme Court held that, "It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation."

13. That finally respondent had written a letter dated 10.08.2020 (annexed as Annexure-C-8.) in response to various letters, as stated above. Said letter was factually incorrect which stipulated that the High Tension line was removed before allotment of plot and before issuance of RLA. If said was the circumstances, then, existence of same could not have been in knowledge of the complainant and hence there would have been no occasion with the complainant to protest and notify the same before the respondent. The respondent had never rebutted to any of the letters which were written by the complainant. The complainant again served a letter dated 17.08.2020 annexed as "Annexure-C-9" upon the respondent informing that complainant had already supplied all documents and photographs. The complainant also requested for personal hearing, but none of them was of any use.



14. That the complainant further wrote various letters dated 20.01.2021, 22.12.2021, 18.06.2022 (annexed as Annexure-C/10 colly) but still there was no response from the respondent.

C. RELIEFS SOUGHT

15. Complainant vide amendment of relief application dated 06.03.2024, has sought following relief:

The respondent may kindly be directed to refund the amount lying deposited, i.e., ₹35,92,000/- paid towards booking of plot in question along with statutory interest with cost throughout, in the interest of justice.

D. REPLY ON BEHALF OF RESPONDENT

16. Respondent filed a detailed reply on 09.02.2023 stating therein that the complainant applied for the allotment of industrial plot alongwith 10% of tentative cost of the plot. Complainant was allotted plot no. 2259, measuring 1800 sq. mtrs, situated in Sector-38, Phase-II, Mega Food Park Rai, District Sonapat vide Regular Letter of Allotment (RLA) dated 05.12.2018 at the allotment rate of Rs.37,400/- per Sq. Mtr. for setting up of project of Industrial Kitchen / Catering Services.



17. That as per the terms and conditions of the allotment, the Complainant was required to deposit 15% of the cost of the plot within 30 days of the date of allotment without interest, further extendable by 30 days alongwith interest @15% p.a. The allotment should have automatically lapsed after the expiry of the stipulated period of 60 days.
18. Further, the complainant was obligated to deposit 15% of the cost of the plot and an additional 25% of the cost of the plot was payable within 60 days without any interest and beyond 60 days, alongwith interest at the rate of 15% per annum. The complainant failed to deposit the 15% price of the plot within the stipulated period of 60 days of the date of execution of Regular Letter of Allotment (RLA).
19. That vide email dated 21.02.2019, complainant stated that the principal amount plus interest may not be charged, as per the instalment mentioned in the Regular Letter of Allotment (RLA), until the HT line passing through the industrial plot is not removed. In this regard the matter was referred to the field office which submitted that as per the report dated 19.12.2019 (Annexure R-1) submitted by the UHBVNL, the HT Line passing over the Plot no. 2260 and nearby Plot no.2259, pcc poles were shifted on 28.11.2018, i.e., prior to the allotment of the plot in the favour of the complainant. The



complainant also earlier vide letter dated 23.04.2019 had thanked the corporation for removal of the HT Lines and sought new schedule for payment of the cost of the plot. The respondent vide letter dated 13.09.2019 (Annexure C-6) informed the complainant that his request for permission to deposit 15% plot cost alongwith applicable interest has been considered by the respondent and acceded to. Therefore, the complainant was requested to deposit the 15% of the cost of the plot alongwith applicable interest at the rate of the 12% per annum and penal interest @3% per annum till the date of payment for taking further necessary action in the matter.

20. That instead of complying with the letter dated 13.09.2019, the complainant vide letter dated 20.09.2019, insisted that the instalment be rescheduled as the HT line was existing over the plot till April 2019. The complainant further took the plea that economy is going through bad phase of depression. Further, perusal of the letter dated 20.09.2019 would reveal that the complainant had not agitated with regard to the allotment rate of the plot.
21. That the complainant vide letter dated 14.10.2019, filed an Appeal before the Hon'ble Chief Minister, Haryana with a copy to Additional Principal Secretary, Government of Haryana, Department of Industries & Commerce (Annexure R-2) with a request not to charge the interest. Perusal of the



Appeal dated 20.09.2019 would reveal that the complainant had not agitated with regard to the allotment rate of the plot.

22. That vide letters dated 23.07.2020 and 10.08.2020, respondent informed the complainant that since the HT line was removed before allotment of plot and the RLA was issued after the removal of HT line, therefore the request for waiver of interest and extension in implementation period is not tenable and hence the appeal is rejected. The complainant was further advised to deposit 15% price of the plot alongwith the applicable interest thereon within 15 days, failing which further auction will be initiated as per policy.
23. That the complainant thereafter also did not deposit any amount towards the cost of the plot and as such the respondent was compelled to cancel the allotment of the plot vide Letter dated 06.10.2021 (Annexure R-3). The complainant filed an Appeal dated 24.06.2022 before the Appellate Authority with prayer for issuance of Regular Letter of Allotment and provide new time for implementation of project or to refund the earnest money which was deposited earlier. The appeal filed by the complainant is yet to be decided. Complainant has now filed the present complaint before this Hon'ble Authority before the outcome of the appeal.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

24. Learned counsel for complainant stated that complainant has filed an application with regard to the amendment of relief on 06.03.2024. Earlier complainant was seeking relief of possession from the Authority but now complainant has changed his relief to refund of the paid amount along with interest as per rules. Said application was supplied to the respondent. However, no rebuttal has been filed by the respondent to the said application till date.
25. He further stated that in the letter issued by Haryana State Industrial and Infrastructure Development Corporation Ltd. dated 23.07.2020, annexed by complainant as "Annexure C-8" to the complaint, it is clearly mentioned that *"your appeal / request was placed before W/ Principal Secretary (industries) Govt. Of Haryana and it has been found that the HT line was removed before allotment of plot in your favour and RLA was issued after removal of HT lines."* Taking reference of the said letter, ld. counsel for complainant stated that cause of action arises as HT line was there in the plot of the complainant. Has there been no HT line, relief of refund sought by the complainant would not subsist. Complainant was allotted a regular letter of allotment dated



05.12.2018 annexed as Annexure C-3 to the complaint and as per E-auction dated 02.08.2018, an amount of ₹35,92,000/- was transferred to the account of respondent against the unit in question. Thereafter, an email dated 05.12.2018 was served to the Managing Director of HSIIDC Ltd. requesting the respondent not to take the principle amount plus interest on instalment as HT line was passing through the plot in question. Subsequent to the said email, other emails were written to the respondent dated 07.12.2018, 06.01.2019 and 21.02.2019 with regard to issuance of fresh Regular letter of allotment, request to remove HT lines from the plot in question. However, no response was received from the respondent to those emails. HT lines were removed by the respondent in April 2019. Subsequently, an email was written on 23.04.2019, thanking the HSIIDC officials for removing the HT lines from the plot in question. He further requested vide said email dated 23.04.2019 to issue the allotment money, rescheduling the instalments and time period for implementing the project, so that physical possession of the plot can be taken by the complainant. Further, emails dated 12.05.2019, 01.07.2019, 11.07.2019 and 30.08.2019 were written by complainant raising the same issue, but respondent didn't pay any heed to the same. A letter dated 10.09.2019 was received by the complainant, wherein, it was stated that "*I am*



directed to inform you that your request dated 12.09.2019 for permission to deposit 15% plot cost alongwith applicable interest has been considered by the Corporation and acceded to. Therefore, you are requested to deposit 15% of the plot cost along with applicable interest @12% p.a. plus 3% penal interest alongwith GST thereon till the date of payment to the corporation for taking further necessary action in this matter". In the said letter, nothing was mentioned about the HT lines. In response to the said letter, emails dated 19.09.2019 and 20.09.2019 were sent to the respondent for issuance of new Regular Letter of Allotment and handing over of physical possession to the complainant. Lastly, after the lapse of 20 months, a letter was issued by the respondent to the complainant dated 10.08.2020 stating that HT lines were removed way before issuance of RLA to the complainant. Therefore, the request for waiver of interest was rejected by the respondent.

26. Ld. counsel for complainant further averred that, if this had been the case, that the HT lines were removed before issuance of regular letter of allotment, then why respondent did not respond to the emails written by the complainant. Further, he stated that respondent can only forfeit the amount paid by the complainant when, it is complainant's fault in making payments to the



respondent and same results into a loss to the respondent. Respondent can never forfeit the amount which had already been received by him.

27. On the other hand, ld. counsel for respondent objected to the same, stating that Regular Letter for Allotment was issued by the respondent on 05.12.2018. She further referred to Annexure R-1 of the reply wherein, a letter was issued to Senior Manager, Industrial Estate, Rai by the Department of UHBVN, stating that HT line passing over the plot no. 2260 and nearby plot no. 2259, pcc poles shifted on dated 28.11.2018...". The said information has been derived from the official Authority. Therefore, it can be concluded that HT lines were removed way before the issuance of RLA. This is the case, where complainant has failed to fulfil his obligations towards the respondent.
28. Authority enquired from the Ld. counsel for respondent that what steps were taken by the respondent to redress the grievances of the complainant and why so many emails written by the complainant were not responded by the respondent? To which, she replied that respondent was already ware of the fact that HT lines were removed before the issuance of RLA.
29. Ld. counsel for the respondent agreed to the change in relief cause of the complainant. However, she further stated that relief shall be granted to the complainant as per the policy of the Govt/ respondent company.



F. ISSUE FOR ADJUDICATION

30. Whether HT wires were removed from the plot of complainant before the issuance of Regular Letter of Allotment or not?
31. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of RERA, Act of 2016?

G. OBSERVATIONS AND DECISION OF AUTHORITY

32. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked an industrial plot in the real estate project; "Mega Food Park, Rai Industrial Area, Sonapat" being developed by the promoter namely; "M/s Haryana State Industrial & Infrastructure Development Corporation Ltd." and by depositing the required application money of ₹35,92,000/- through RTGS dated 02.08.2018. Thereafter, complainant issued a Regular Letter of Allotment (RLA) dated 05.12.2018 vide which complainant was allotted Plot no. 2259, Sector 38, Phase-2, Food Park, Rai, Sonapat admeasuring 1800 sq. mtr. As per said Regular Letter of Allotment, tentative price for the plot in question was fixed at ₹67,320,000/-. Complainant has deposited an amount of ₹35,92,000/- against the plot in question till date.



33. As per clause 2(vii) of the Regular Letter of Allotment "*although physical possession of the aforesaid Industrial Plot has been offered, it is, however, made clear that physical possession of the Industrial Plot shall be delivered to you only after having executed an agreement by you with HSIIDC. Any delay on your part to execute the agreement and to take over the possession of the industrial plot shall not exempt your liability to pay the interest on the outstanding amount towards the price as well as qua the non implementation/non completion of the project within the stipulated period. Thus, after executing the aforesaid agreement, you may immediately contact our field office at IE/IMT Rai to take the physical possession of the Industrial Plot through a letter of possession, in writing, from the concerned field office.*" Perusal of file reveals that respondent after issuance of the Regular letter of Allotment, failed to execute an agreement with the complainant. Therefore, it is difficult to ascertain deemed date of possession as to when possession of the booked plot was to be actually handed over to the complainant. Moreover, even from the said clause it is difficult to ascertain the time period for handing over the actual possession. Thus, to calculate a tentative deemed date of handing over of possession, reference has been made to the observation of the Hon'ble Apex Court in 2018 STPL 4215 SC titled as



M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) and arr. for reckoning the deemed date of possession as 3 years from the date of booking/allotment. Therefore, the deemed date of possession in the present complaint is taken 3 years from the date of issuance of Regular Letter of Allotment (i.e. 05.12.2018) which turns out to be 05.12.2021.

34. To adjudicate the first issue, *whether HT wires were removed from the plot of complainant before the issuance of Regular Letter of Allotment or not?* Authority is of the view that Regular letter of Allotment to the complainant was issued for the plot in question on 05.12.2018. However, due to the presence of HT wire line passing through the industrial plot, complainant wrote several reminders/emails to the respondent requesting the respondent to remove the HT wire from the plot. On the same date as the issuance of the allotment letter, i.e., 05.12.2018, the complainant sent an email to the respondent, requesting the removal of the HT wires from the plot before issuing a letter of physical possession. Additionally, the complainant asked the respondent to refrain from charging the principal amount or any interest, as outlined in the Regular Letter of Allotment, until the HT wires were removed. Following this initial communication, the complainant sent several follow-up emails to the respondent reiterating the same request on the



following dates: 06.01.2019, 21.02.2019, 23.04.2019, 12.05.2019, 01.07.2019, 11.07.2019, 30.08.2019, and 04.09.2019. Despite these multiple reminders, the respondent failed to respond to any of the emails/letters. Even respondent in his reply has failed to prove that any response was made to the above said reminders/emails to the complainant. Subsequently, on 13.09.2019, the respondent issued a letter (No. HSIIDC: Estate: 2019/1362), which made no mention of the HT wires. Instead, the respondent stated: *"I am directed to inform you that your request dated 12.07.2019 for permission to deposit 15% plot cost alongwith applicable interest has been considered by the Corporation and acceded to. You are therefore requested to deposit 15% of the plot cost alongwith applicable interest @12% p.a. plus 3% penal interest along with GST thereon till the date of payment tot eh Corporation for taking further necessary action in this matter"*. If the HT wires had been removed by this time, the respondent would have likely informed the complainant through this communication. However, there was no mention of the removal of the HT wires, and the focus of the letter was solely on demanding payment for the plot. The complainant replied to this letter on 19.09.2019, stating, *"I hereby request you to kindly tell me clearly the amount required to be deposited alongwith interest and GST part so that I*



can make payment as early as possible". Additionally, on 20.09.2019, the complainant sent another letter to the respondent, which stated: "...but my patience was fruitful and when I visited my plot again in last week of April 2019, I found that all the HT wires were clear. ... then I wrote numerous mails to the esteemed officials to kindly issue me the letter demanding allotment money by rescheduling instalments and its time period, enabling us to take physical possession of the plot and started the project as soon as possible. I constantly wrote in months of May, June, July, August, September 2019 for the same, but all unanswered, then all of a sudden on 13.09.2019, HSIIDC arose out of its deep sleep and issued a letter allowing to deposit 15% plot cost along with interest clause and not clearing the further course of action.it is total injustice to us by asking interest and penal interest for the delays for which allottee is not responsible". After numerous communications from the complainant, the respondent finally replied on 10.08.2020, asserting that the HT wires had been removed well before the issuance of the Regular Letter of Allotment. As a result, the respondent rejected the complainant's request for a waiver of interest.

35. The respondent, in an effort to substantiate the claim that the HT (High Tension) wire was removed prior to the issuance of the Regular Letter of



Allotment, has relied solely on a letter dated 19.12.2019, issued by the Uttar Haryana Bijli Vitran Nigam (UHBVN) through memo No. Ch-4246-Rai. This letter, addressed to the Estate Manager of the Industrial Estate Rai, states: *"this is for your kind information that H.T. line of 11k.v. Badmalink feeder passing over the plot no. 2260 and nearby plot 2259 pcc poles shifted on dated 28.11.2018 on consumer request receive on behalf of plot no. 2260 vide estimate no. SD-223/18-19. Under SDO 'op' Rai UHBVN. During the year 2019-2020."*

36. However, upon careful examination of the contents of this letter, it is unclear which specific HT wire the department is referring to. Firstly, the letter ambiguously refers to an HT line but does not specify with certainty which HT wire it is addressing. It lacks precise details regarding the exact wire or wires that were shifted and fail to explicitly connect this shifting to the specific HT wire that the respondent claims was removed before the allotment letter was issued. The last sentence of the Said letter, *"During the year 2019-2020"* is totally vague. This vagueness leaves room for doubt as to whether the removal of HT line and PCC poles mentioned in the letter were removed in 28.11.2018 or during the year 2019-2020. If the same were shifted in 2019-2020 then the contentions of complainant are correct as he himself thanked



the respondent vide letter dated 20.09.2019 and apprised that on his visit to plot, he found that all the H.T. wires were clear. Moreover, the respondent has not produced any additional documents or corroborating evidence to support the claim that the HT wire was removed before the Regular Letter of Allotment was issued. The reliance on this one letter, which is unclear in key aspects, weakens the argument. In the absence of further documentary evidence or clarification, the respondent's claim remains unsubstantiated.

37. Further, respondent's continued failure to respond to the complainant's repeated communications regarding the removal of the HT wires from the allotted plot demonstrates clear negligence and disregard for the complainant's concerns. Despite these efforts, the respondent did not provide any response or take action. This lack of communication and failure to address the issue highlights the respondent's carelessness, particularly in matters that directly affect the complainant's ability to take possession of and make use of the industrial plot. In these circumstances, Authority concludes that HT (High Tension) wire was removed from the plot in question after the issuance of Regular Letter of Allotment.

38. Furthermore, the respondent has also submitted a cancellation letter dated 06.10.2021, wherein the complainant's plot was cancelled due to non-



payment of dues within the stipulated timeframe. According to the contents of this cancellation letter, the complainant's booking was cancelled, and the respondent expressed the intention to forfeit the application money in accordance with their policy. However, while the respondent has referenced the cancellation letter, they have failed to provide evidence that it was ever properly served upon the complainant. In this case, the respondent has not furnished any proof of service, such as a delivery receipt, acknowledgment from the complainant, or any other form of documentation that would substantiate that the complainant was duly notified of the cancellation. Moreover, the complainant has not addressed this cancellation letter in his complaint, which further indicates that he might not have been aware of its existence. In the absence of proof of service, the respondent's claim of having cancelled the plot remains questionable. Even if the cancellation letter were to be accepted by the Authority, there remains another significant issue: the respondent has failed to fulfill their own obligation to refund the amount of ₹35,92,000/- to the complainant. However, to date, no such refund has been made, which constitutes a breach of the respondent's own promise and policy. Given these circumstances, where the cancellation letter was neither proven to have been served to the complainant nor followed up with the promised



refund, the Authority finds it appropriate to declare the cancellation letter dated 06.10.2021 as null and void.

39. Furthermore, in respect of plea of respondent that appeal has been filed by the complainant on 24.06.2022 before the Appellate Authority and the same is pending. It is observed by the Authority that no documentary evidence has been filed by the respondent in support of said plea and to substantiate the fact that appeal is still pending before the Appellate Authority. Mere pleading of pendency of appeal is not sufficient to reply upon submissions of the respondent. Therefore, plea of respondent is declared devoid of merit.
40. Lastly, valid offer of possession of the plot free from all encumbrances should have been delivered to the complainant by the year 2021 but was not delivered or even offered till date. This significant delay in handing over possession, coupled with the respondent's failure to provide any updates or communication regarding the status of the HT wires in the project, highlights a pattern of negligence and non-responsiveness on the part of the respondent. The complainant's repeated attempts to seek clarity on the HT wire issue through multiple letters have been met with silence from the respondent. It has been clearly established that there has been an unreasonable and unjustified delay in handing over the booked unit. The respondent's failure to



meet the agreed-upon timeline for possession and their continued non-compliance with communication requests demonstrate a lack of due diligence and commitment in fulfilling their contractual obligations. In such circumstances, it is unreasonable to expect the complainant to wait indefinitely for possession. Given the severity of the delay and the absence of any clear resolution or commitment from the respondent, complainant is entitled to refund of the amount along with interest. Thus, inordinate delay caused in the handing over of the unit would totally justify the prayer for refund of money paid by complainant.

41. Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement



regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent; therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

42. 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;

43. 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".

44. 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., 08.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.95%.



45. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon them under RERA Act, 2016 and the complainant is entitled for refund of their deposited amount along with interest. Accordingly, respondent will be liable to pay the interest to the complainant from the dates when amount was paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2% which as on date works out to 10.95% (8.95% + 2.00%) from the date amount was paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.95% from the date of payment till the date of this order, which comes to ₹59,28,237/- (₹35,92,000/- (principal amount) + ₹23,36,237/- (interest accrued till 08.07.2024), according to the receipts/statement of accounts provided by the complainant, details of which are given in the table below –



Sr.no	Principal amount	Date of payment	Interest accrued till 08.07.2024
1.	₹35,92,000/-	02.08.2018 (RTGS challan)	₹23,36,237/-
	Total=₹35,92,000/-		₹13,21,387/-
Total amount to be refunded by respondent to complainant= ₹35,92,000/- + ₹23,36,237/- =₹59,28,237/-			

H. DIRECTIONS OF THE AUTHORITY

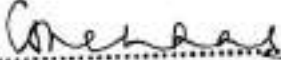
46. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act, 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount deposited by the complainant along with interest @10.95% to the complainant as specified in the table provided above in para no 45 from the dates when amounts were paid till the actual realization of the amount.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of



Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would be taken against the respondent.

47. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]