

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

Date of decision: 23.07.2024

S.No.	Case No.	Case title	APPEARANCE
1.	CR/1608/2023	Dushant Jain V/s M/s Ramaprastha Promoters & Developers Private Limited	Shri Sushil Yadav, Advocate And Navneet kumar, Advocate
2.	CR/1941/2023	Col. R.C. Yadav V/s M/s Ramaprastha Promoters & Developers Private Limited	Col. R.C. Yadav, Complainant, Shri Sushil Yadav, Advocate And R Gayathri Manasa, Advocate

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

ORDER

1. This order shall dispose of the 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed *inter se* between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project being developed by the respondent/promoter i.e., M/s Ramaprastha

Promoters & Developers Private Limited. The issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession and delay possession charges.

3. The details of the complaints, reply to status, plot no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Ramprastha City", Sectors 37C & 37D, Gurugram, Haryana.				
Possession Clause: - Not Provided						
Sr. No	Complaint No., Case Title, and Date of filing of complaint	Plot No.	Date of execution of plot buyer's agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/1608/2023 Dushyant Jain V/s M/s Ramprastha Developers Private Limited DOF- 06.04.2023 REPLY- 22.08.2023	300 sq. ft. [as per payment receipt] Not allotted	Not Executed	15.12.2014 [Calculated from payment of receipt as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)]	TSC: - Rs.81,90,00 0/- AP: - Rs.61,90,00 0/- as per receipt at page 13 of complaint	Allotment of 300 sq. yards plot, Possession along with delayed possession charges

2.	CR/1941/2023 Col. R.C. Yadav V/s M/s Ramprastha Developers Private Limited DOF- 26.04.2023 REPLY- 22.08.2023	250 sq. ft. [as per payment receipt] Not allotted	Not Executed	25.12.2013 [Calculated from payment of receipt as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)]	TSC: - 42,50,000/- AP: - Rs.18,00,000/- as per receipt at page 12 of complaint	Allotment of 250 sq. yards plot, Possession along with delayed possession charges
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Note: In the table referred above certain abbreviation have been used. They are elaborated as follows:

Abbreviation	Full Form
DOF	Date of filing of complaint
TSC	Total sale consideration
AP	Amount paid by the allottees(s)

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1608/2023 titled as Dushant Jain Vs. M/s Ramaprastha Promoters & Developers Private Limited** are being taken into consideration for

determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

A. Unit and project related details

6. 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:

CR/1608/2023 titled as Dushant Jain Vs. M/s Ramaprastha Promoters & Developers Private Limited

S. No.	Particulars	Details
1.	Project name and location	"Ramprastha City", Sectors 37C & 37D, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Unit no.	Not Alloted
4.	Unit measuring	300 sq. yds. (As per receipt information at page no. 14 of complaint)
5.	Date of allotment letter	Not executed
6.	Date of execution of plot buyer agreement	Not executed
7.	Total consideration	Rs.81,90,000/- (As alleged by the complainant at page no. 9 of the complaint)
8.	Total amount paid by the complainant	Rs.61,90,000/- [As per receipt information on page no. 13 of the complaint]
9.	Due date of possession	15.12.2014 [Calculated from payment of receipt as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)]

10.	Occupation Certificate	Not obtained
11.	Offer of possession	Not offered

B. Facts of the complaint

7. The complainant has made the following submissions: -

- I. That on 15.12.2011, the complainant had booked a plot of size 300 sq. yds. with Ramprastha Promoters Developers Pvt. Ltd after making a payment of Rs.61,90,000 vide different cheques at their registered office at Shop No 10, C-Block Market, Vasant Vihar, New Delhi in the presence of all the directors of the respondent company. The complainant made total payment of Rs.81,90,000/- to the respondent out of which Rs.61,90,000/- paid vide different cheques and issued receipt no. 2236 dated 15.12.2011 and paid Rs.20,00,000/- in mode of cash, the respondent duly accepted the payment against the amount paid but failed to provide the receipt of cash amount handover to them even after repeated request and follow up.
- II. That respondent agreed to allot a plot admeasuring 300 sq. yds. in sector 37 D, Gurugram to the complainant. At the time of booking of the aforesaid plot and after payment, the respondent had agreed to deliver the possession of the plot within 30 months from the date of booking of the plot i.e., 15.12.2011 with an extended period of 180 days i.e., 14.06.2014. The complainant regularly followed up the respondent for execution of the builder buyer agreement, but the respondent evaded the matter on one pretext or other. The respondent kept assuring the complainant that the possession of the plot will be handed over soon as the complainant had made the amount. However, for the reason best known to them, respondent

never delivered the possession of plot nor executed the builder buyer agreement.

- III. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the plot without completing the work and not handing over the possession on time. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant.
- IV. That despite receiving of more than 100% approximately payments on time for all the demands raised by the respondent for the said plot and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted plot to the complainant within stipulated period.
- V. That it could be seen that the construction of the block in which the complainant plot was booked with a promise by the respondent to deliver the plot by 14.06.2014 but was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

- VI. That due to this omission on the part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the plot on time. That as oral agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.90/- per sq. yd. per month of the total area of the plot. That a clause of compensation at such a nominal rate of Rs.90/- per sq. yd. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the plot even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation.
- VII. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the plot is delivered to the complainant.
- VIII. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the plot in question along with prescribed interest on the amount deposited by the complainant, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

8. The complainant have sought following relief(s):

- I. Direct the respondent to pay interest for every month of delay at prescribed rate of interest.
9. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

10. The respondent has contested the complaint by filing reply dated 22.08.2023 on the following grounds: -

- I. That the complainant has merely filed a money receipt which is not acceptable as a valid document and does not create any right in favour of the complainant to invoke the provision of the Act, 2016. The complainant has not filed any documents to prove that the complainant is an allottee within the definition of the Act, 2016. Hence, the present complaint is not maintainable in its present form and the complaint is liable to be dismissed in limine on the above ground.
- II. That the present case is nothing more than a sheer abuse of process of law on the face of it by the present complainant with the sole motive of extracting huge amount of interest from the respondent which itself manifests the malicious intent of the present complainant.
- III. That the complainant had approached the respondent and made inquiries regarding future projects of the respondent. That the complainant was categorically informed there is no plot available since the zoning plans have not been approved. The complainant had voluntarily sought to advance money to the respondent in anticipation of future approval and in the hope of making speculative gains. But since

the zoning plans have not been approved by the government till date, the complainant has sought to file this vexatious complaint which is completely unsubstantiated and is bereft of any material documentary evidence. The respondent not agreed to provide any service whatsoever to the complainant since the plans were not approved by the competent authority and the complainant has not provided any documents to prove that any such promise was ever made by the respondent. The complainant has voluntarily entrusted a sum of money to the respondent so that they will get the priority in case the development plans eventually get approved by the competent authority. The respondent has neither promised any plot or location nor promised any particular price or completion date to the complainant. Hence, there is no question of any breach by the respondent and no cause of action has accrued in favour of the complainant.

- IV: The complainant fully being aware of the dynamic prospects of the said futuristic project which was indeterminate at the point of time when the complainant paid the money and the fact that it is subject to various government approvals for which there is no time line assured by the government authorities, either promised or otherwise, they have still decided to keep their money with the respondent which was clearly with a speculative purpose and such speculative acts are not protected by any law. Hence, no right of the complainant could be said to have been breached by the respondent, giving rise to any claim for interest

as alleged by the complainant. Hence, the complainant is liable to be dismissed with costs.

- V. That from the date of payment till the date of filing of the present complaint, the complainant has never raised any demand or claim whatsoever even though the complainant always had the option which show that the complainant voluntarily let his money remain with the respondent for his own selfish and speculative intents. The complainant has now approached the authority with concocted and fabricated story to conceal the true matrix of the situation accordingly to which the complainant has no vested right in any determinate project but has merely paid money to be allowed to participate in case the approvals had come through. The conduct of the complainant clearly indicates that the complainant's objects and intents are speculative not only behind making the payment but also behind filing the present complaint. It is shocking that the complainant is claiming refund and trying to abuse the process of this authority to claim hefty interest which is not tenable in law in the facts and circumstances of the present case. The complainant has no vested right to claim refund of amount paid as there is no question of any delay as alleged by the complainant. It is submitted that the delay is non-existent and imaginary under the present facts and hence, there is no entitlement of any interest whatsoever.
- VI. That further no date of possession has ever been mutually agreed between the parties. In absence of any document in the nature of a

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

- VII. That the complainant cannot be construed as an "Allotee" by any stretch of imagination. That, for existence of a status of an "Allotee", the pre-existing criteria is that of a subsistence of "plot" or "apartment" or a "building" and the consideration must have been towards such determinate "plot" or "apartment" or "building". That in the present case at hand, there is no pre-existing plot as alleged by the complainant. That the complainant had merely made a payment towards a future potential project of the respondent no.1 which on such date was not even in existence. Further, such advance payment by the complainant was only adopted as a measure to ensure priority over others when any such project is launched. That the complainant herein does not meet the

criterion established by the Act, and therefore, cannot be admitted as “an Allottee”.

- VIII. That the objective of the legislation of RERA is twin folded. One, to regulate and promote real estate sector and to ensure sale of plot, apartment, or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and secondly, to protect the interest of the consumers in the real estate sector. That, therefore, only a genuine allottee within the meaning of the Act can avail the benefit of remedy under this Authority and the complainant who has come through misrepresentation, deceit and suppressing material facts with an unclean hand and ill conscience cannot approach this Authority.
- IX. That the respondent is in the process of obtaining the approvals and shall bring the plots into existence on such approval and shall offer the possession of the same but as on date, the complainant has no vested right to demand refund of amount paid. The complainant always had the opportunity to take its money back but had voluntarily let its money remain with the respondent. That the objective of the RERA is not to substitute civil proceedings for plain recovery which would otherwise fall within the jurisdiction of the civil court.
- X. That the complainant has approached the respondent and have communicated that the complainant are interested in a project which is “not ready to move” and expressed their interest in a *futuristic project*. It is submitted that the complainant is not interested in any of the ready to move in/near completion projects of the respondent . It is submitted

that a futuristic project is one for which no price can be determined, and such projects are sold at the prevailing rate which is determined when the project receives its approval and further amounts such as EDC/IDC charges are also known with certainty. It is submitted that on the specific request of the complainant, the money was accepted, and no commitment was made towards any particular price or property or date of handover or possession since such terms were not foreseeable or known even to the respondent. The respondent had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainant towards the price and the complainant was duly informed that such prevailing price shall be payable as and when approvals are in place. The complainant is an elite and educated individual who has knowingly taken the commercial risk of advancing money even though the property was non-determinate and the price was dependent upon future developments and was not foreseeable at the time of booking transaction. The complainant cannot be allowed to shift the burden on the respondent as the real estate market is facing rough weather.

- XI. That the complainant is not an allottee and hence the proceedings are merely in the nature of recovery which is not maintainable before this Authority. That even if it is assumed that such a claim in the nature of money is maintainable, the claim is hopelessly barred by limitation filed after the expiry of 3 years from the date of payment.

XII. All other averments made in the complaint were denied in toto.

11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

13. 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

14. 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.

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

F. Objections raised by the respondent:

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

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

"Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as leasehold) or be, has on to whom a plod whether as freehold or leasehold otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

17. On bare perusal of the definition of "allottee", it is evident that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter. Upon careful perusal of documents on record, it is revealed that the complainant had paid a sum of Rs.61,90,000/- for purchasing a plot admeasuring 300 sq. yards in future project of respondent. The fact that the multiple payments were received by the respondent against a 300 sq. yards plot from the complainant clearly shows that there was very much an agreement to sell the 300 sq. yards with the complainant. In the present case, the complainant is aggrieved by the act of non-compliance of this part of the contract by the respondent. Hence, objection of the respondent that complaint is not maintainable stands rejected.

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

18. The respondent raised another objection that complaint is not maintainable as there is "no agreement to sale" executed between the parties. Mere fact that an allotment letter specifying a unit no. was not issued to complainant does not mean that they were not an allottee of the respondent. Once respondent has accepted the multiple payments from complainant for purchase of a plot in his project, it was the obligation of respondent to allot them a unit no. within a reasonable time. Failure on his part to do so will not affect the rights of applicant as an allottee.

19. Even a receipt which specifies the details of unit such as area of the plot, price etc., booked by complainant will be treated as agreement for selling the property. The definition of "agreement for sale" as provided in Section 2(c)

means an agreement entered between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement with respect to agreement entered between the allottee and the promoter before RERA Act of 2016 coming into force. Accepting the payment towards a unit in present and future project shows there was a meeting of minds that the promoter will give possession in any present or future project developed by respondent. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly shows that the complainant booked a plot in respondent's future project. Accordingly, contention of the respondent that there is no agreement to sell has been executed stands rejected. Hence, relief sought by the complainant under the provisions of section 18 of the RERA Act is maintainable.

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

20. The respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of *Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation vs Commissioner of Central Excise* wherein the Hon'ble Apex Court had held that Indian Limitation Act applies only to the courts and not to the Tribunals. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that

Act being quasi-judicial and not a court. The promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring.

21. On consideration of the documents available on record and submissions made by the party, the authority observes that the project in question is an ongoing project, and the respondent/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

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

22. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
23. Moreover, it is observed that vide receipt dated 15.12.2011, it was agreed between the parties that the promoter shall give possession of a plot having size of 300 sq. yards to the complainant. Further, it was agreed that on completion of the process of allotment to all allottees, the promoter will get the plot registered in name of the complainant on payment of stamp duty and other charges payable to the government. However, despite receipt of consideration amount of Rs.61,90,000/- from the complainant back in 2011

against the booked plot, the respondent-promoter has not even allotted a specific plot to the complainant and also no effort has been made by it to get the plot registered in her name till date. As the respondent has failed to handover the possession of the allotted plot to the complainant and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduced as under for ready reference:-

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

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

G. Findings on the relief sought by the complainant

25. The common issues with regard to delay possession charges and possession is involved in the aforesaid complaints.

G.1 Direct the respondent to pay delayed possession charges for the delay at prescribed rate of interest.

26. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

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."

27. These are admitted facts that on 15.12.2011, the complainant had booked a plot admeasuring 300 sq. yards. in futuristic project of the respondent by paying an amount of Rs.61,90,000/- via cheque and purportedly an additional Rs.20,00,000/- in cash. On the same date, the respondent issued a receipt numbered 2236 for the cheque payment of Rs.61,90,000/-. The complainant has not provided any documentation to substantiate the cash payment. Consequently, the Authority has not considered the cash component in its evaluation. It is important to note that no plot buyer agreement has been executed between the parties. The complainant has paid Rs.61,90,000/- as booking amount to book a plot in the futuristic project in the year 2011 but no such plot number was allotted to him. Even no completion date, no basic price was mentioned in the receipt. Thus, in view of the foregoing facts the respondent who has accepted an amount of Rs.61,90,000/- since 2011 has been in custody of the money paid for allotment of the plots and has been enjoying benefits out of it.
28. Now, the issue which needs adjudication in this complaint is whether complainant is entitled to the relief of possession along with delay possession charges of plot booked by the complainant along with interest for delay in handing over the possession in absence of allotment letter and builder buyer agreement.
29. In the instant matter, even after lapse of 8 years from the date of payment till the filling of complaint, no allotment letter and buyer's agreement has been executed inter- se parties. Even till date, the respondent has miserably failed to specify the project name as well as plot number where 300 sq. yards.

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

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

- out to be 15.12.2014 (three years from the date of first payment on 15.12.2011), manifesting that there has been a delay of more than 9 years in handing over possession, making the respondent liable to pay delayed interest charges as per section 18 of the Act, 2016 along with possession.
33. **Payment of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.
34. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
35. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.07.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11 %**.
36. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
38. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. The possession of the subject plot was to be delivered by 15.12.2014. However, the respondent/promoter have not allotted a specific plot number to the complainant and also have failed to handover possession of the plot to the complainant till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to allot a specific unit number and handover the physical possession. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted plot to the complainant. Further no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
39. Further, the abovementioned issue dealt by the Haryana Real Estate Regulatory Authority, Panchkula in the case titled as ***Nishant Bansal VS M/s Parsvnath Developers Limited decided on 11.03.2020***, the following has been observed:

15. *For the reasons recorded above, the complaints are allowed and the respondent is directed to allot and deliver the possession of booked plots to the complainant in the project Parsvnath City, Sonipat on payment of balance sale consideration recoverable from them. The respondent shall*

comply with these directions within 90 days from the date of uploading of this order. In case the respondent due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it from the open market at his own cost. The respondent however will be entitled to recover from the complainant the balance amount payable by them as per the rate agreed by the parties at the time of booking of plots.

40. Moreover, the respondent/applicant has filed an appeal before The Haryana Real Estate Appellate Tribunal, and the same was decided on 31.10.2022, and the Hon'ble Appellate Tribunal observed:

23. *"The submission of the learned counsel for the appellant that the directions given by the learned Authority in the impugned order that the appellant is liable to make available to the respondent /allottees plots of the size, as booked, by purchasing the same from the open market at its own costs are not feasible, is also without any substance because it is established on the record that the appellant had sold the plots which were meant for the respondent /allottees, at premium by ignoring the legitimate rights of the respondent /allottees for allotment of the plots and the appellant/promoter had earned premium by effecting the illegal sales. Once this fact has been established that the appellant/promoter by ignoring the legitimate and legal claim of the respondent /allottees, had sold the plots meant for them on premium to other persons, the learned Authority under Section 37 of the Act, is competent to issue directions as it may consider necessary.*
24. *Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondent /allottees in the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter, interest for every month of delay till the handing over of the possession, as such rate as may be prescribed. Accordingly, the respondent /allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 11% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.*
25. *Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 11% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with*

compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer."

41. In view of the reasons stated above and judgement quoted above, the respondent is directed to allot a specific plot number and issue a allotment and execute the buyer's agreement of the said plot allotted to them within a period of 90 days from the uploading of this order. In case, respondent/promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, in any existing project it will be liable to make available to him a plot of the same size, specifying the future upcoming project wherein specify plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
42. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11% p.a. w.e.f. 15.12.2014 till the date of offer of possession plus two months or handing over of possession, whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules. Further, the respondent shall be provided a specific plot no. in the project of the Ramparstha City and execute the agreement to sell as per prescribed format provides in the Rules of 2017, in the agreed terms contained in 2014.

H. Directions of the authority

43. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

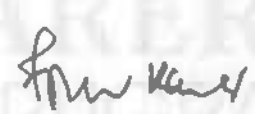
cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to allot a specific plot of 300 sq. yds in its project namely Ramprastha City, Sector- 37-C and 37-D, Gurugram and execute buyer's agreement within a period of 30 days.
- ii. The respondent is directed to handover the physical possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.
- iii. The respondent/promoter is directed to offer possession of the allotted plot within 30 days after obtaining completion certificate/part completion and handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority. The complainant w.r.t. obligation conferred upon her under section 19(10) of Act of 2016, shall take the physical possession of the subject plot, within a period of two months of the completion certificate.
- iv. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11% p.a. for every month of delay from the due date of possession of each case till actual handing over of possession or offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- v. The arrears of such interest accrued from due date of possession of each case till the date of order by the authority shall be paid by the respondent/promoter to the complainant-allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- vi. The complainant/allottee is directed to pay outstanding dues, if any, after adjustment of interest from the delayed period.
44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
45. Complaint stands disposed of.
46. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.07.2024