HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1426 of 2021**
Date of filing:	**23.12.2021**
First date of hearing:	**01.04.2022**
Date of decision:	**12.08.2025**

1. Urmila Arya,

W/o Satinder Singh

R/o H. No. 790/30, Bhanti Bhawan, Dev Colony,

Distt. Rohtak- 124001

2. Babita

W/o Jitender Singh

R/o H. No. 790/30, Bhanti Bhawan, Dev Colony,

Distt. Rohtak- 124001

.....COMPLAINANTS

Versus

The Estate Officer

HSVP

Sector-12, Faridabad,

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh **Member**
Chander Shekhar **Member**

Present: -Adv Manu Ahlawat, Counsel for the complainant through VC.
Adv Arvind Seth, Counsel for the respondent through VC.

ORDER

1. Present complaint is filed by the complainant 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 Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Sector-56-56A, Urban Estate, Faridabad
2.	Name of the promoter	Haryana Shehri Vikas Pradhikaran.

3.	RERA registered/not registered	Unregistered
4.	Plot no.	2907 P
5.	Date of builder buyer agreement	Not provided
6.	Possession clause in allotment letter	Clause 7- Clause-26
7.	Tentative price of the plot	₹34,84,327/-
8.	Amount paid by complainant	₹45,30,400/-

B. FACTS OF THE PRESENT COMPLAINT

3. That plot no. 2907 P was initially allotted to Ms. Mathuri Hooda on 13.12.2010. Allotment letter dated 13.12.2010 is annexed at page 10 of the complaint. Thereafter, said plot was transferred in the name of the present complainants Urmila Arya and Babita on 27.01.2011 through a transfer letter. Transfer letter is annexed at page 14 of the complaint as annexure-2.

4. That according to the terms and conditions mentioned in the allotment letter the said plot is preferential/ special one and an extra price at the rate of 10% - 20% has been levied which is included in the tentative price. The complainants have made the payment of aforesaid plot in six yearly installments as mentioned in para 27 of the allotment letter from the year 2011 to 2017 amounting to a total of Rs. 45,30,400/- inclusive of interest payable on each instalment.

5. That according to para 7 of the allotment letter the possession of plot was to be offered within a period of three years from the allotment after completion of developmental work in the area. It was stated in the allotment letter that in case, the possession is not offered within the stipulated time, the authority i.e., HSVP shall pay interest of 9% on the amount deposited by the applicant till the actual date of offer of possession.

6. That it is pertinent to mention here that after the passage of ten years of handing over the allotment letter the authority has miserably failed to offer the possession to the applicants with the promised basic amenities. Basic amenities such as electric poles, sewerage lines/ pipes etc are not present in the project. The road in front of the said plot is also not constructed/motorable till date. The adjoining land is encroached upon and illegal colonies/houses are constructed over it. Furthermore, there is no green belt present in front of the plot and the 100 mtr road as depicted in the site map is not available on ground as it has also been encroached upon.

7. That complainants sent a legal notice under Section 80 CPC to the respondent via speed post on dated 23.09.2021 (tracking no. EH674266483IN) but no reply was received from the respondent. The

copy of legal notice with tracking report is annexed herewith as Annexure A5.

8. That the respondent has failed to abide by the contractual terms as stipulated in the allotment letter and the respondent is in breach of allotment letter. The cause of action to file the complaint is continuing as the respondent has failed to deliver possession on the stipulated terms in the allotment letter of the said residential plot. In view of the above, since the Respondent was in default the complainants are entitled to invoke Section 18 of RERA, 2016.

9. That no similar complaint/suit is filed or pending before any court or authority with the same cause of action with respect to the present residential plot of this project.

C. RELIEF SOUGHT

10. Complainant sought following relief:

(i) In exercise of powers under Section 35, direct the respondent to place on record all statutory approvals and sanctions of the project.

(ii) To pay delay possession interest over the payment deposited by the complainant @15% per annum compounded annually and reallocate the same plot having such facilities and preferential location as mentioned in the allotment letter

Or in alternative

To refund the interest levied upon by the respondents over the annual installments paid by the complainant.

(iii) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. In the present case, respondent has filed replies on 3 dates i.e, short reply on 25.04.2023, another reply on 01.08.2023 and a detailed reply on 12.12.2023. On perusal of replies dated 25.04.2023 and 01.08.2023 it was found that the contentions are same in both replies. Counsel for the complainant also sought clarification as to which reply rejoinder has to be filed by him. In that eventuality, Authority in its order dated 02.08.2023 had clarified that reply dated 01.08.2023 will not be considered to decide the matter on merits because both replies were same. However in the interest of justice detailed reply dated 12.12.2023 will be taken into consideration.

12. In short reply dated 25.04.2023, respondent has made the following submissions:

i. That this ld. Authority has got no jurisdiction to entertain the present complaint as the complainants in the present complaint had failed to produce any cogent evidence pertaining to non-offering of possession by the answering respondent as the possession was duly offered by the respondent by the allotment letter issued on 13.12.2010 itself.

ii. That the complainants without approaching respondent for demand of possession directly approached this Ld. Authority without any justified reason.

iii. The present complaint deserves to be rejected solely on the ground that the residential plot No. 2907 (P) Sector- 56-56A measuring 323 Sq. Mt, Faridabad was initially allotted to Smt. Mathuri Hooda vide allotment letter memo no. 50448 dated 13.12.2010 on the tentative price of Rs. 3484327/- Thereafter, the same was transferred in the name of present complainants vide transfer letter memo no. 3462-63 dated 27.01.2011.

iv. That as per clause 26 of the allotment letter issued to the original allottee, Smt. Mathuri Hooda it was specifically mentioned that " The possession of the site is hereby offered. You may take possession of the site on any working Monday" By bare perusal of the above stated fact it is apparent that the present complainants are subsequent purchaser of the plot in question who had purchased the plot with open eyes and the complainants were fully conversant with the fact that the possession of the plot in question has already been offered by the respondent in the allotment letter dated 13.12.2010.

v. That the complainants at the time of issuing allotment letter had furnished an affidavit, wherein they specifically undertake not to claim

any sort of delay possession interest from the answering respondents. The complainant had duly conceded to the terms and conditions of the re-allotment letter and submitted the duly sworn affidavit with due diligence and full knowledge. The complainants furnished the affidavit on account of usage of property in question and for acceptability of the allotment by virtue of which the complainant became the allottees of the H.S.V.P.

vi. That the development works (Roads and sewerage & water supply) in front of the plot in question were completed in 2009 and the electrification works were duly completed in 2012. The report received from the Executive Engineer, Electrical Division, HSVP, and Faridabad dated 10.09.2019 clearly shows that the PCC poles have been erected in front of the above plot on 03.09.2012.

vii. That as per HSVP policy the subsequent purchaser is not entitled for delay possession interest and in view of the above stated facts, it is most humbly prayed that the present complaint may kindly be dismissed in the interest of justice.

13. In the detailed reply dated 12.12.2023; respondent has made the following submissions:

i. Respondent has submitted that the jurisdiction of this Authority is barred because the project was completed before coming into force the RERA Act, 2016. Reference is made to judgment of Hon'ble Supreme Court of India in the case titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and others etc. in Appeal Case Nos. 6745-6749 of 2021***. The relevant portion of said judgement has been reproduced as under:-

> *37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception inter se rights of the stake holders allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold real estate authority*
>
> *54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.*

It is further stated that there is no provision in any law where the HSVP (HUDA) has to take completion certificate or occupation certificate.

ii. That instructions dated 16.04.2009 issued by the competent authority under the provisions of Haryana Urban Development Authority Act, 1977 provides that in case, the allottee cannot be handed over the possession of the plot after depositing of the whole amount of the allotment price, in that case, the allottee is entitled to receive the interest @ 9% per annum till the possession is offered to the allottee. Similarly, under Section-18 of the Haryana Real Estate Regulatory Authority Act, 2016 also provides that in case the promoter is unable to handover possession within the prescribed time limit then the allottee is entitled for interest for every month of delay till handing over the possession at such rate as is prescribed under Rule-15 of the Haryana Real Estate Regulatory Authority Rules, 2017.

iii. That after co-joint reading of the instructions dated 16.04.2009 issued by the competent authority of the answering respondent provides 9% interest per annum in case the possession is not offered to the allottee and on the reading of Rule-15 of The Haryana Real Estate (Regulation and Development) Rules, 2017 clearly shows that there is a repugnancy of the provisions of HUDA Act, 1977 qua the interest rate mentioned in the provisions of RERA Rules,

2017 on the same subject, therefore, as per Article 254(2) of the Constitution of India, until and unless the law enacted by the State Legislature i.e. in the present case HUDA Act, 1977 is not repealed/amended or varied by the parliament, therefore, the provisions of Haryana Real Estate Regulatory Authority Act/Rules are not applicable on the land which has been developed and further plots have been allotted under the provisions of HUDA Act, 1977.

iv. That the allotment to complainants has been made under the Haryana Development (Disposal of land and buildings) Regulations, 1978 which were made by exercising the powers of Section 54 of the Haryana Urban Development Authority Act, 1977(hereinafter referred to as HUDA Act, 1977). Thus, the provisions of RERA Act, 2016 are not applicable in the cases where the land has been developed by way of acquisition under the Land Acquisition Act and thereafter it has been developed under the provisions of HUDA Act, 1977. It is stated that HUDA Act has been enacted by the state legislature with the aim and object to constitute a statutory authority in place of department of urban estate for ensuring the speedy and economic development of urban areas in the State of Haryana. Thus, the areas which have been developed under the provisions of HUDA Act, 1977 do not come under the purview of the RERA Act, 2016.

v. That Part-11, Chapter-11 of Constitution of India which prescribes the distribution of legislative relations between union and the states and distribution of legislative powers. It is stated that Article 246 of the said constitution provides subject matter of laws made by parliament and by the legislatures of the states. Said Article 246 of the Constitution of India has been reproduced as under:-

> ***246. Subject-matter of laws made by Parliament and by the Legislatures of States.***
>
> *(1)Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").*
>
> *(2) Notwithstanding anything in clause (3). Parliament, and, subject to clause (1), the Legislature of any State 1*** also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in) this Constitution referred to as the "Concurrent List").*
>
> *(3) Subject to clauses (1) and (2), the Legislature of any State 1*** has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").*
>
> *(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2 [in a State] notwithstanding that such matter is a matter enumerated in the State List."*

vi. Thus, the State has power to enact the law related to transfer of property. Said power is traced from the provisions contained in the Schedule-7 of the concurrent list of Entry No. 6 which provides that there is no inconsistency in the RERA and

HUDA Acts as both the Acts are enacted of their different roles, i.e., RERA Act is for regulation and promotion of real estate sector keeping in view the difficulty faced by the consumers of flats and plots buyers at the ends of the private developers and the HUDA act is enacted for urban development, which received the assent of President of India on 30.04.1977 and was published in the Haryana Gazette on 02.05.1977, where the land is acquired by the Urban Estate Department. Thus, the RERA Act and the HUDA Act operate in different fields as the HUDA cannot be equated with the private developers as the acquisition of land is done by the state government for HUDA under the Land Acquisition Act(s).

vii Further, respondent referred Article 254(2) of the Constitution of India which provides that if the law made by the State legislature with respect to any of the matter enumerated in the concurrent list contains any provisions repugnant to the provisions of earlier law made by the parliament or an existing law with respect to that matter then the law so made by the State Legislature of the state shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that state. However, it is subject to proviso that in case Parliament enact any law in respect of the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State, then in that case law made by the Parliament shall prevail.

viii. That since the HUDA Act, 1977 has not been repealed by the Parliament in the present case in accordance with proviso to Article 254(2) of Constitution, as Maharashtra Housing (Regulations and Development) Act, 2012 which was enacted after receiving the assents of the President was repealed by the Parliament while enacting the Maharashtra RERA Act, therefore, the provisions of RERA Act, 2016 are not applicable in this case, where the land has been developed under the provisions of HUDA Act. 1977.

ix. That possession was duly offered after completion of the basic amenities by allotment letter issued on 13.12.2010. Said offer of possession was issued after completion of the basic amenities as per the report of Executive Engineer, HSVP (Civil), Division Faridabad the Executive Engineer, HSVO, Electrician Division, Faridabad.

E. REJOINDER FILED BY THE COMPLAINANT

Complainants have filed a rejoinder dated 06.10.2023 thereby refuting the claims of the respondent and reiterating the submissions in the complaint.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. Ld. Counsel for the complainant submitted that plot no. 2907 was initially allotted in favor of Ms. Mathuri Hooda on 13.12.2010. Said plot was later transferred in favor of the complainants on 27.01.2011. Payment of the plot

was made in 6 yearly instalments from the year 2011 to 2017 and a total amount of Rs. ₹45,30,400/-has been paid against the said plot. As per para 7 of the allotment letter the possession of the plot was to be offered within three years from the date of allotment after completion of developmental work in the area and in case of default in offering possession within the stipulated time, respondent shall pay interest of 9% on the amount deposited by the allottee. Further, he referred to para 26 of the allotment letter which provides that the "possession of the site is hereby offered and you may take possession on any working Monday". He stated that para 26 and para 7 of the allotment letter are contradictory to each other. He also referred to annexure R-2 of reply filed by the respondent dated 01.08.2023 wherein it has clearly been stated that electrification was completed on 03.09.2012, he argued that when the electrification was completed in the year 2012 then how can the respondent write in its allotment letter dated 13.12.2010 that allottee can take possession on any working Monday. He alleged that construction work was not completed by the respondent till the year 2017 and respondent has not offered possession of the plot to the complainants till date.

15. Ld. Counsel for the complainant also referred to the photographs submitted on behalf of the complainants on 25.04.2025. He submitted that the said photographs shows that some shed construction is being done in the premises of residential sector, sewerage is overflowing.

16. Ld. Counsel for the respondent submitted that possession has already been offered to the original allottee as per clause 26 of the allotment letter and neither the original allottee nor the complainants have applied for possession of the plot till date.

G. ISSUE FOR ADJUDICATION

17. (i) Whether there has been delay in handing over of possession of the plot to the complainant/allottee?

(ii) Whether the complainant is entitled to possession of re-allotment of a similarly located plot or the allotted plot along with delay interest in terms of Section 18 of Act of 2016 for delay caused in offering possession of the plot?

H. OBSERVATIONS OF THE AUTHORITY

I. Objection regarding jurisdiction of this Authority to entertain the present complaint.

18. One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply to the projects of the respondent as the same was completed prior to coming into force of RERA Act, 2016 and there is no provision in any law where the HSVP (HUDA) has to take completion certificate or occupation certificate. In this regard Authority observes that even if contention of the respondent in this regard is accepted then also complainants in the present complaint are seeking possession of their booked plot along with delay interest i.e, a statutory relief under Section 18 of RERA

Act, 2016. Authority observes that proviso to Section 18(1) of the Act relates to statutory obligation of promoter towards allottee. Section 18 is reproduced herein below:

> *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:* ***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.***
>
> *(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*
>
> *(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*

19. Section 18(1) provides for remedy to "an allottee" if the promoter facts fails to complete or is unable to give possession of an apartment,

plot or building in accordance with the terms of the agreement for sale or as the case may be. Meaning thereby, that remedy available under section 18(1) is not restricted to allottees of a registered/registrable project. Had that been the case the same would specifically provided/mentioned in section 18(1).

20. Further, Plain reading of the Section 2(d) 2(zk) and Ss. 2(zj) & (zn) of RERA Act,2016 leaves no room for any ambiguity and makes it clear that HSVP is a promoter in respect of complainant allottee of the plot allotted by it in its real estate project and there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondent is established and the issues deals with real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter.

II. Finding on objection regarding applicability of provisions of RERA Act, 2016 where land has been developed under the provisions of HUDA, Act, 1977.

21. Respondent contended that the provisions of RERA Act, 2016 are not applicable to cases where the land has been developed by way of acquisition under the Land Acquisition Act and thereafter developed under the provisions

of HUDA Act, 1977. Before adjudicating upon said issue, Authority considers it important to refer to the Preamble of RERA Act, 2016 and has reproduced below for reference:

> *"Preamble: An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the 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 to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected connected therewith or incidental thereto."*

22. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute. The preamble provides that it shall be the function of the Authority to ensure sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers in the real estate sector by establishing a mechanism for speedy dispute redressal.

23. The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate i.e. plot, apartment or building, as the case may be and matters incidental thereto. Hon'ble Bombay High Court in the case ***Neelkamal***

Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors. 06.12.2017

– BOMHC observed:

> *"In my opinion RERA does not fall under Entry 42 in List III-Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule".*

The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: entry-6 and entry-7 ready with entry-46.

24. This Act regulates the transactions relating to the sale of above mentioned real estate projects, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. Section-88 of the RERA, Act, 2016 clearly provides that the provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. Furthermore, Section 89 provides that the provisions of this Act shall have the effect, notwithstanding anything inconsistent therewith, contained in any other law for the time being in force. Thus, there remains no ambiguity

with respect to the fact that the Authority while adjudicating the complaints filed under Section 31 of the Act are only deciding the rights and obligations of the parties i.e. the builder/Promoter/developer and the allottee inter-se as per the agreement for sale entered into between them for sale of a real estate project.

III Findings on the objection that subsequent-allottee who had executed an indemnity cum undertaking/affidavit with waiver clause is not entitled to claim delay possession charges.

25. The respondent has submitted that as per HSVP Policy the subsequent purchaser is not entitled for delay possession interest. In this regard Authority observes that as per Section 2(d) of RERA Act, 2016 the term "allottee" is defined as under:

> *Section-2. In this Act, unless the context otherwise requires-*
> *(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

Accordingly, following are allottees as per this definition:

(a) **Original allottee:** A person to whom a plot, apartment or building. as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.

(b) Allottees after subsequent transfer from the original allottee: A person who acquires the said allotment through sale, transfer or otherwise. However, allottee would not be a person to whom any plot, apartment or building is given on rent.

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (1) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that the RERA Act, 2016 does not differentiate between original allottee and subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the allotment letter including the rights and liabilities of the original allottee. Hence, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee shall only remain for

identification for use by the promoter. Therefore, the authority does not draw any difference between the allottee and subsequent allottee per se.

Reliance is placed on the judgment dated 26.11.2019 passed in consumer complaint no. 3775 of 2017 titled as ***Rajnish Bhardwaj Vs. M/s CHD Developers Ltd. by NCDRC*** wherein it was held as under:

> *"15. So far as the issue raised by the Opposite Party that the Complainants are not the original allottees of the flot and resale of flat does not come within the purview of this Act, is concerned, in our view, having issued the Re-allotment letters on transfer of the allotted Unit and endorsing the Apartment Buyers Agreement in favour of the Complainants, this plea does not hold any water."*

The authority concurs with the Hon'ble NCDRC's decision dated 26.11.2019 in ***Rajnish Bhardwaj vs. M/s CHD Developers Ltd. (supra)*** that it is irrespective of the status of the allottees whether it is original or subsequent, an amount has been paid towards the consideration for a unit and the endorsement by the developer on the transfer documents/ re-allotment letter clearly implies his acceptance of the complainants as allottees.

26. Therefore, taking the above facts into account, the Authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The complainants/subsequent allottees at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the allotment letter issued by promoter-respondent to an original allottee. Moreover, the amount, if any,

paid by the subsequent or original allottee, is adjusted against the unit in question and not against any individual. Furthermore, the name of the complainants/subsequent allottees have been endorsed on the transfer letter dated 21.01.2011 issued by the promoter-respondent. Therefore, the complainant took over all the rights and obligation of the original allottees and the promoter will also be governed by the said re-allotment letter.

27. Respondent in its reply has also submitted that complainants have specifically undertaken not to claim any sort of delay possession interest from the respondent. To adjudicate upon this issue the relevant clause i.e., clause 3 of said affidavit has been reproduced hereunder:

> 3. *"That the dependent shall not raise any dispute in respect of interest paid by the transferor in respect of delayed payment of instalments/ enhanced/ possession interest in respect of Plot as per policy of the authority decided from time to time."*

28. The Authority is unable to gather any reason or has not been exposed to any reasonable justification as to why a need arose for the complainants to sign any such affidavit and as to why the complainants have agreed to surrender their legal rights. No sane person would ever execute such an affidavit or indemnity-cum-undertaking unless and until some arduous and/or compelling conditions are put before him with a condition that unless and until, these arduous and/or compelling conditions are performed by him, he will not be given any relief and he is thus left with no other option but to obey

these conditions. Exactly same situation has been demonstratively happened here when the complainants/ subsequent-allottees have been asked to give the affidavit or indemnity-cum-undertaking in question before transferring the unit in their name otherwise such transfer may not be allowed by the promoter. Such an undertaking/ indemnity bond given by the complainants thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. No reliance can be placed on any such affidavit/ indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on the said affidavit/indemnity cum undertaking. To fortify this view, we place reliance on the order dated 03.01.2020 passed by hon'ble NCDRC in case titled as ***Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd. Consumer case no. 351 of 2015***, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below:

> *"Indemnity-cum-undertaking*
>
> *30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-*

undertaking before it would give possession of the allotted flats to the concerned allottee.

***Clause 13** of the said indemnity-cum-undertaking required the allotter to confirm and acknowledge that by accepting the offer af possession, he would have no further demands/claims against the company of any noture whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre- requisite condition for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-com undertaking. The obvious purpose behind such an undertaking was to deter the allotter from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. **The execution of such an undertaking would defeat the provisions of Section 23 and 20 of the Indian Contract Act, 1872 and therefore would be against public policy besides being an unfair trade practice.** Any delay solely on account of the allottee not executing such undertaking would be attributable to the developer and would entire the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity"*

The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgment dated 14.12.2020 passed in civil appeal no's 3864-3889 of 2020 against the order of NCDRC.

29. Hon'ble Supreme Court and various High Courts in a plethora of judgments have held that the terms of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court ***in civil appeal no. 12238***

of 2018 titled as Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan (decided on 02.04.2019) as well as by the ***Hon'ble Bombay High Court in the Neelkamal Realtors Suburban Pvt. Ltd. (supra).*** A similar view has also been taken by the Apex court in ***IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna &Ors. (supra)*** as under:

> *".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Boyer's Agreement constitutes on unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fore were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An unfair contract" has been defined under the 2019 Act and powers have been conferred on the State Consumer Forum and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.*
>
> *In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer Agreement."*

The same analogy can easily be applied in the case of execution of an affidavit or indemnity-cum-undertaking which got executed from the complainants/subsequent allottees before getting the unit transferred in their name in the record of the promoter as allottees in place of the original allottee.

30. The Authority may deal with this point from yet another aspect. By executing an affidavit/undertaking the complainants/subsequent- allotters cuts their hands from claiming delay possession charges in case there occurs any delay in giving possession of the unit beyond the stipulated time or the due date of possession. But the question which arises before the Authority is that what does allottee got in return from the promoter by giving such a mischievous and unprecedented undertaking. However, the answer would be "nothing". If it is so, then why did the complainants executed such an affidavit/undertaking is beyond the comprehension and understanding of this authority.

31. The Authority holds that irrespective of the execution of the affidavit/undertaking by the complainants/subsequent allottees at the time of transfer of their name as allottees in place of the original allottee in the record of the promoter does not disentitle them from claiming the delay possession charges in case there occurs any delay in delivering the possession of the unit beyond the due date of delivery of possession as promised even after executing an indemnity-cum-undertaking.

32. Respondent has furthermore contended that even if it is assumed that allottee is entitled to delay interest then as per HUDA Act, 1977 the allottee is entitled to receive the interest @9% per annum till the possession is offered in case the allottee cannot be handed over the possession in due time. In this

regard Authority observes that as per finding given in the preceding paragraph, RERA Act, 2016 is enacted by parliament to regulate the contractual relationship between builder-buyers. Since, section 89 of the Act provides that if there is any provision inconsistent with the provisions of RERA Act, then RERA Act shall have the overriding effect, thus, even if the rate of interest is provided as 9% in HUDA Act, 1977, the same cannot be accepted.

I. OBSERVATIONS OF THE AUTHORITY

33. Authority has gone through the rival contentions. In the light of background of the matter as captured in this order and also the arguments made by both the parties, Authority observes that there is no dispute with regard to the fact that residential plot no. 2907(P), Sector 56-56A, measuring 323 sq. mtr was initially allotted to Smt. Mathuri Hooda vide allotment letter dated 13.12.2010 and the same was transferred in favour of present complainants on 27.01.2011. Fresh builder buyer agreement has not been executed between the parties. An amount of Rs. 45,30,400/- as per the receipts submitted by the complainants stands paid to the respondent.

34. The main grievance of the complainants is that despite having made timely payments as per the payment plan the respondent has till date not offered possession of their preferentially located plot even after lapse of 12 years from the date of allotment. Complainants now seek relief of delay

possession interest and relocate them to the plot having such facilities and preferential location or to refund the interest levied upon by the respondents over annual instalments paid by the complainants.

35. On perusal of the allotment letter dated 13.12.2010 Authority observes that clause 7 of the allotment letter stipulates that possession of the plot will be offered within a period of 3 years from the date of allotment letter after completion of developmental works in the area whereas clause 26 of the same allotment letter states that "possession of the site is hereby offered and you may take possession of the site on any working Monday". On a plain reading of both these two clauses they prima facie appear to be contradictory, however these clauses contemplates to two scenarios. In first case the developmental works were complete on the date of issuance of this allotment letter dated 13.12.2010 then on the date of allotment the possession of the site stands offered and the allottee was obligated to take the possession of the site on any working Monday, whereas clause 7 provides for another scenario in case the developmental works were not complete on the date of issuance of allotment letter then in that case Haryana Shehri Vikas Pradhikaran undertook that the plot will be offered within a period of 3 years from the date of allotment letter after completion of developmental works in that area.

36. In the present case, respondent has averred that as per clause 26 of the allotment letter, the possession stands offered on the date of issuance of

allotment letter. Now it is to be seen whether on the date of allotment the developmental works in the area were complete or not. Perusal of letter dated 30.08.2019 issued by the Executive Engineer, HSVP annexed as annexure R-3 of the reply dated 25.04.2023 reveals that development works such as roads, sewerage, and water supply were completed in the year 2009. However there is another letter dated 10.09.2019 issued by Executive engineer, HSVP annexed as annexure R-2 of the said reply that reveals that electrification in front of the plot no. 2907(the plot allotted to the complainants) was completed on 03.09.2012 meaning thereby that development works were not completed in the project till 2012. Since, the developmental works were not complete on the date of issuance of allotment letter dated 13.12.2010, possession could not have been offered on the same date i.e., date of allotment. Thus, clause 26 of the Allotment letter shall have no bearing on the present complaint and the deemed date of possession in the present case shall be determined as per clause 7 of the allotment letter. As per clause 7, possession of the plot was to be offered within a period of 3 years after completion of development works in that area, i.e., by 13.12.2013. It is a matter of record that the essentials, developmental works, such as roads, severage, water supply and electricity were completed by September 2012, i.e, before the due date of possession. However, there is nothing on record placed by respondent to establish that aforementioned services were the only

mandatory development works, that were required to be completed before offering the possession, and there was no requirement of any other development works, such as linking these internal services to the external services. Nevertheless, even if is presumed that all development works were completed by 03.09.2012, it was upon the respondent to communicate this fact to the complainants allottees and also to make a formal offer of possession with respect to the plot. However, it is matter of fact and record that subsequent to completion of such developmental works by 03.09.2012, respondent never offered the possession of the plot to the complainants. Further, this fact is also corroborated by the statement of accounts dated 16.07.2025 which shows that till date no penalty for non- acceptance of possession since 2010 have ever been imposed upon the complainants. Therefore, in view of the above observation, Authority concludes that till date no legally valid offer of possession has been made to the complainants allottees.

37. Respondent has taken a plea that the complainants have never applied for possession to respondent and directly approached this Authority without any justified reason is of no relevance. Authority observes that as per RERA Act, 2016, obligation is casted upon the promoter-builder to complete the development works and take appropriate approvals from the competent authorities and then make an offer of possession to allottees as per agreement

for sale. Thereafter, burden shifts upon the allottees to take the possession after paying all the dues towards the total sales consideration of the unit allotted. However, the factual condition of the present case reveals that the promoter-respondent itself has failed to complete or unable to give possession of the unit in accordance with the terms of allotment letter dated 13.12.2010, or to offer of possession of the plot. Thus, complainants have rightly approached the Authority to enforce their statutory rights under the provisions of the Act of 2016 and plea of respondent to dismiss the case on ground that complainants have never applied for possession to respondent is outrightly discarded.

38. Since, the respondent has failed to handover the possession on the deemed date of possession, i.e., by 13.12.2013, thus, the complainants are now entitled to two remedies u/s 18 of RERA Act. i.e.,

i. In the event, the allottee wishes to withdraw from the project, he/she shall be entitled without prejudice to any other remedy refund of the amount paid along with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act;

ii. In the event, the allottee does not intend to withdraw from the project, he/she 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.

39. However, in the present case, complainants wish to continue with project and insisted upon the relief of delay interest along with possession of the plot allotted to them. The provision of delayed possession charges has been provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:

> *"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*
> .....
> ***Provided** that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

40. Thus, 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. Rule 15 has been reproduced as under;

> *"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18and 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".

41. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the HRERA Rules, 2017 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.

42. Consequently, as per website of the State Bank of India ie. https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e. 12.08.2025 is 8.90% Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.

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. Considering above facts, delay in handing over of the possession of the unit has been established. Therefore, the respondent is liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession i.e., 13.12.2013 till today along with future interest for every month of delay occurring thereafter till the handing over of possession at the rate prescribed in Rule 15 of the HRERA Rules, 2017.

44. Authority has got delay interest calculated from its account branch. The details of amounts paid by the complainants and delay interest calculated on said amounts are shown in the following table: -

Amount paid by complainants	Upfront delay interest calculated by Authority till date of order i.e., 12.08.2025 @ 10.90% p.a rate of interest.	Further monthly interest till the date of actual handover of possession.
Rs. 42,36,800	Rs. 50,65,31/-	Rs. 37,957/-

45. Complainant prayed that he was allotted a prefentially located plot WITH GREEN BELT in front, however, there is no green belt present in front of the

plot and the 100 mtr. road as depicted in the site map. Thus, complainants have prayed that appropriate directions be passed in this regard. Authority observes that since complainants were allottee prefentially located plot and paid for the same they are entitled to get the possession of the same. Therefore, respondent is directed to ensure that the green belt is present in front of the plot no. 2907 failing which respondent will be under an obligation to refund the amount charged on account of preferential location charges along with prescribed rate of interest as provided in Rule 15 of HRERA, Rules .

J. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent is directed to pay the complainants upfront amount of Rs. 50,65,361/-.Respondent's liability for paying monthly interest of Rs. 37,957/- as shown in above table will commence w.e.f 13.09.2025 and it shall be paid on monthly basis till actual possession is given to complainantsafter completing the development works and

taking appropriate approvals from the competent authorities.

(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 follow.

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

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]