

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

Complaint no. : 863 of 2025
Date of complaint : 14.02.2025
Date of order : 26.08.2025

Sandeep Agarwal,
R/o: - A-245 LGF Block A, Shiwalik Malviya Nagar.

Complainant

Versus

M/s Ramprastha Estates Private Limited.
Regd. Office At: - Plot no. 114, Sector 44, Block-C,
Gurugram-122002.

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Shri Nilotpall Shyam (Advocate)
Shri Navneet Kumar and Rajat Gupta
(Advocates)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

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

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Cannot be ascertained
2.	Project area	Cannot be ascertained
	Date of receipt issued by REPL	17.08.2010
3.	Plot no.	N.A.
4.	Unit area admeasuring	300 sq. Yds. (as per receipt dated 17.08.2010) (Page no. 13 of the complaint)
5.	Date of booking application	N.A.
6.	Welcome letter	N.A.
7.	Allotment letter	N.A.
8.	Date of execution of plot buyer's agreement	N.A.
9.	Possession clause	N.A.
10.	Due date of possession	17.08.2013 (Calculated as per fortune infrastructure and ors. Vs. Trevor D'limo and ors)
11.	Basic price of the plot	Cannot be ascertained
12.	Amount paid by the complainant	Rs.49,50,000/- [As per receipt information page no. 13 of complaint]
Notes: Vide proceeding dated 26.08.2025, Sector 92,93,95 and 37-D was inadvertently mentioned.		

B. Facts of the complaint

3. The complainant has made the following submissions: -
 - I. That the respondent through their representative had approached the complainant and represented that the respondent's upcoming plot project at Sector-37D, Gurgaon, Haryana i.e. Ramprastha City, Sector-37C and 37D will effectively serve the residential purpose of complainant and their family and has the best of the amenities. They allured them for lower rates prevailing in market at the point of time.
 - II. That based on the aforementioned representation and enquiries made, the complainant advanced a payment of Rs.49,50,000/- to the respondent on 17.08.2010. In return to the payment made the respondent generated a payment slip confirming the payment made. The respondent promised to allot the plot in the upcoming project in Sector 37D Gurugram Haryana. That the complainant moved from pillar to post for a span of 14 years for getting the BBA signed and allotment letter issued. The Complainant made a physical visit to their Gurugram Office but every time they made false promises for allotment of the said plot and execution of the BBA.
 - III. That in January 2025 the complainant choose the formal way of communication and wrote an email to the respondent. In the email dated 15.01.2025 the complainant wrote to the respondent that the receipt was issued by them and the payment made was confirmed. The complainant requested them to allot the plot number and get the BBA signed. But there was no reply from the side of the respondent. As a reminder email on 28.01.2025 the complainant again wrote to the company for taking the appropriate step so that the plot can be allotted and handed over at the earliest in interest of justice. But to the surprise of the complainant there was no reply again.
 - IV. That the respondent with malafide intent gave false assurances to the

complainant regarding the new dates of allotment of plot at the time of paying the booking amount. The respondent completely stopped responding without assigning any reason whatsoever for such a prolonged delay. Respondent applied for registration of the impugned project before Authority in accordance with law. The Authority while discharging its regulatory/administrative functions granted the registration to the impugned real estate project "Ramprastha City-Sector-37C & 37D" vide Regd. No. 298 of 2019 dated 05.06.2020 on terms and condition as enumerated in the said registration certificate. The Clause(x) of the said registration certificate clearly provides that the respondent is under an obligation to refund the money paid along with interest at the prescribed rate if the promoter fails to deliver the possession of the impugned flat in accordance with BBA or else the respondent shall pay delayed interest for every month of delay in handing over the possession as per BBA till the actual handing over of the possession if the allottee wishes to continue with the project.

- V. That the respondents are continuous and recurring defaulter and no respite is available against such a recurring either on justiciable or equitable ground. Any further extension to them will amount to travesty of justice as respondents actions seems to be taken in bad faith and with ill motive to misappropriate complainants hard earned money. The BBA need to be signed at the earliest possible date and plot should be handed over at the earliest. Appropriate amount need to be paid for the extraordinary delay made in fulfilling the obligations. Further, since there is an inordinate delay in handing over possession of the unit, therefore, for the purposes of Section 18 of the RERA Act, 2016, 3 years' time period shall be counted for handing over possession from the date of payment

i.e. 17.08.2010 as for other similarly situated matter three years' time was provided in the BBA by respondent's for handing over possession.

- VI. That accordingly, the respondent shall be directed to pay delayed possession interest at prescribed rate from 17.08.2013 till the actual handing over of possession. Further, the respondent conduct of not executing BBA even after elapse of 14 years is unfair practice on the part of the respondent for which either steps for revocation of registration may be taken under the Act, 2016 or necessary penalty shall be imposed under Section 61 of the Act.
- VII. That there is almost 14 years of unexplained and inordinate delay in handing over the possession by the respondents to the complainants without any sign of them meeting the future deadline. That it is a fit case wherein Authority shall order for handing over of possession of the plot and BBA need to be signed at the earliest along with the interest for unreasonable delay at the prescribed rate in view of the mandatory obligation as provided under Section 18 of Act, 2016 as well as on account of the acrimony of respondent wherein they obliterated the trust reposed on them by complainants by handing over their hard-earned money always on time. The respondent did not perform the required reciprocity which goes to the very root of any agreement.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):
- I. To direct the respondent to execute the BBA and allot specific plot number within 30 days.
 - II. To Impose penalty on the respondent for not complying to the terms of RERA Act, 2016 and involving in unfair practices under Section 61 of the RERA Act, 2016.
 - III. To direct the respondents to also handover physical possession of the plot within a reasonable time.

- IV. Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.
- V. To direct the respondents to execute the conveyance deed in favour of the complainants.

5. 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.

6. The respondents have contested the complaint on the following grounds:
- i. That the present complaint is a sheer abuse of the process of this Court as it has been filed to seek a remedy in the absence of any corresponding vested right. The complainant is not an allottee and there is no agreement that can sought to be enforced by the complainant by invoking the provisions of the Act, 2016.
 - ii. That the complainant has misused and abused the process of law by filing the captioned complaint that too on the basis of receipt dated 17.08.2010 which was issued only on the request of complainant towards tentative registration of plot in future potential project.
 - iii. That neither does the receipt on which the complainant has sought to harp specifies date of completion or total consideration, but the same is even conspicuously silent on the details of the name of the project, the Sector in which it is situated, and other vital details. The said receipt clearly state that the receipt was issued against tentative registration of plot of land in future potential project and hence by any stretch of imagination do not constitute a binding contract which could be enforced for specific performance and hence the complainant has filed this frivolous and misleading complaint to seek the relief of specific performance of obtaining possession of plot along with execution of plot buyer agreement knowing well that such relief are not

tenable in law not only in view of the provisions of the 2016 Act but also in view of the provisions of Specific Relief Act, 1860 and the law of limitation.

- iv. It may be pertinent to mention here that neither does the receipt on which the complainant has sought to harp makes any reference to the answering respondents nor specifies any understanding with the answering respondents with respect to any plot number, date of completion or total consideration. The RECEIPT is conspicuously silent on the details of the name of the Project, the Sector in which it is situated, and other vital details. The said receipts clearly state that the receipt was issued by respondent no. 2. Hence by any stretch of the imagination such a RECEIPT is not legally enforceable against the answering respondent 1 and hence, relief of specific performance is not available against the answering respondents.
- v. That the complaint is timed barred and therefore deserves to be set aside on this count alone, amongst other grounds. Pertinently, the receipt on which the respondent is placing reliance upon dates back to the year 2010, whereas the complaint has been filed in 2025, evidently after a delay of 15 years. Neither any plausible explanation has been furnished by the respondent in respect of such delay but even no substantive ground has been raised in the complaint that would give way to condone such a phenomenal delay. Further, the delay itself is evidence of the fact that the complainant did not wish to pursue his alleged rights against the respondent for several years and chose to wake up from slumber much later in a frivolous attempt to have his alleged rights indicated. In such circumstances, the Authority ought to dismiss the complaint with exemplary costs.
- vi. That in one of the future projects that had been conceived by the respondent, the respondent being aggrieved of the incorrect Sectoral plan of Sector 37-C and D, Gurugram for which License No.128 of 2012 dated 28.12.2012 was

granted to the respondent, had approached the Department of Town and Country Planning, Haryana. Pertinently, vide order dated 01.04.2021 in *Appeal No.1 of 2021; Ramprastha Estates Pvt. Ltd. versus Director, Town and Country Planning, Haryana, Chandigarh*, the period between the date when the license was issued by the department i.e. 28.12.2012 and the date of approval of the revised/correct Sectoral Plan i.e. 01.09.2017 was ordered to be treated as 'Zero Period' as far as the obligations of the respondent are concerned insofar as the dues and other concomitant approvals and charges as appurtenant to the license are concerned.

- vii. That no cause of action has accrued in favour of the complainant u/s 18 of the Act, since the complainant has not demonstrated the existence of any mutually agreed terms and conditions including date of handover of possession which could be said to have been breached by the respondent.
- viii. That the present case is nothing more than a sheer abuse of the process of law on the face of it by the present complainant with the sole motive of extracting huge amounts of interest from the respondents. The respondent herein has 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 so that they will get the first priority in case the development plans eventually get approved by the competent authority. The respondents have never entered into any agreement with the complainant and neither promised any particular 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 under the provisions of RERA, 2016.

- ix. That the complaint has been filed with *mala fide* intention and is an abuse of the process of this Authority which is evident from the prayers wherein the complainant had demanded hefty interest when there was no agreement between the complainant and the respondent whatsoever for either any allotment or any development and there exists no agreed terms for possession date or price or location/project etc., hence there are no terms which can be said to be legally enforceable under the provisions of the Act, 2016. The complainant is very well aware of the fact that the money entrusted by the complainant was not towards any booking or agreement but merely on the request of complainant towards the tentative registration in future projects. The complainant filed the complaint claiming wrongful gains in the form of interest at the cost of the respondent when in reality there was no such understanding between the parties and there is no condition to attract the provisions of the Act. That the complainant approached the respondent in the year 2016 showing an interest in participating in one of the future potential projects of the respondent. The above-named future potential project was indeterminate at the point of time when the money was paid by the complainant.
- x. That the complainant had the option at all times to either claim a refund of their money or let their money remain with the respondent in anticipation of future approvals which is subject to government action. Further, the complainant had the option at all times to recall his money even if any future approval would have come through, in the event, they were not willing to participate in such projects. Since the complainant always had such option but voluntarily opted to let his money remain with the respondent, hence they cannot be allowed to claim interest which has no legal or contractual

basis. The 2016 Act can come to the rescue of only genuine allottees and not speculative individuals like the complainant.

- xi. The complainant fully being aware of the dynamic prospects of 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, 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 complaint is liable to be dismissed with costs.
- xii. That from the date of payment till the date of filing of the present complaint, the complainant has never raised any refund demand or refund claim whatsoever even though the complainant had the option at all times which show that the complainant voluntarily let his money remain with the respondent for his own selfish and speculative intents. The complainant is even today not claiming any refund (the same being in any way time barred) but are trying to abuse the process of the Authority to claim hefty interest which is not tenable in law in the facts and circumstances of the present case. The conduct of the complainant clearly indicates that the complainant objects and intents are speculative not only behind making the payment but also behind filing the present complaint.
- xiii. That the complainant is indirectly claiming specific performance for delivery of an indeterminate property on the basis of indeterminate terms which is not permissible in the eyes of law. The complainant has no vested right to claim possession of any plot in the absence of an enforceable agreement and

hence there is no question of any delay as alleged by the complainant. The delay is absolutely non-existent and imaginary under the present facts and hence, there is no entitlement of any interest whatsoever.

- xiv. That further no date of possession has ever been mutually agreed between the parties since the project itself was a future potential project and hence not determined. That in absence of any document in the nature of a Plot 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.
- xv. That 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. There is no possibility of execution of a Plot Buyer Agreement especially in light of the fact that there are no specific terms that have been mutually agreed between the parties.
- xvi. That as per the averments made by the complainant, the complainant has claimed interest from the year 2010 till the date of actual handover of possession. However, the complainant has failed to establish as to how such a date of default has been calculated by the complainant. The respondents, at no point in time, had specified the date on which the possession of the units/plots were to be handed over. Further, it cannot even be said that such a position was unknown to the complainant. Thus, for the complainant to now approach this Authority and seek delayed possession charges along with interest, that too from a date which does not have any edifice and is at best a self-appointed date, is not only an act that is grossly illegal but even a

ruse to arm-twist the respondents to give in to the illegal and erroneous demands of the complainant. In the absence of any assurance by the respondent even as to the date of commencement of the futuristic project, the complainant cannot be said to have any cause of action.

- xvii. That the claim for possession is superfluous and *non-est* in view of the fact that plots were never allotted whatsoever. Also, the terms have not been determined and could not be determined as on date unless the project is identified, and approvals are granted by the concerned authorities. It is only after the allotment of plot and subsequent determination of the specific terms and conditions and mutual agreement thereon, the complainant will get the right to claim possession, or a delay penalty and it is submitted that such right has not yet crystalized in favour of the complainant.
- xviii. That in absence of any written contract or agreement between the parties establishing terms and conditions, obligations and rights, consideration, location, project etc., the specific prayer for allotment, handover of possession, for execution of conveyance deed and Delay Possession Charges is not maintainable before this Authority.
- xix. In the present case, the complainant has not been able to place on record any allotment letter that was issued by the respondents in respect of the plots, possession whereof the complainant is claiming. As such, in the absence of the complainant falling under the relevant definition of 2016 Act does not entitle them to pursue their remedy, if at all, under the 2016 Act. As such, the complaint is liable to be dismissed on this count as well.
- xx. That the complainant had merely made a payment on his own request towards the tentative registration in the future potential project of the respondent. That the complainant herein does not meet the criterion

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

- xxi. That the complainant herein had preferred the present complaint on the basis of receipt issued way back in 2010 against tentative registration in the future potential project of the respondent and the said receipt was not issued against any identified or specific plot/project and hence, till such a time a particular plot in an identified project is allocated, the complainant herein cannot be termed as an allottee within the meaning of the RERA Act or any such other law.
- xxii. That no builder buyer agreement/agreement has been entered into between the complainant and the respondent herein which sets out any rights and obligations of the complainant and the respondent or any such terms and conditions including location, project, total consideration, stipulated time for completion and handover. The complainant's status as “Allottees” can only be established by virtue of a valid contract or agreement or allotment between the complainant and the respondents herein. A receipt towards a tentative registration of plot in a future potential project cannot form rights and liabilities with respect to the parties unless and otherwise a specific identified plot in a specific project is thus decided.
- xxiii. That the complainant have approached the respondent herein and have communicated that the complainant is interested in a project which is “not ready to move” and expressed their interest in a *future project*. The complainant is not interested in any of the “ready to move in/near completion projects” of the respondent. That a future 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. That on the specific request of the complainant, the money was accepted only for the tentative registration 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 herein. The respondent herein had no certain schedule for the handover or possession since a lot of legal time taking formalities are required to be completed in such a futuristic project and hence no amount was received/demanded from the complainant towards the price and the complainant is duly informed that such prevailing price shall be payable as and when approvals are in place. The complainant is an educated individual who have 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 tentative registration transaction. That the complainant cannot be allowed to shift the burden on the respondent as the real estate market is facing rough weather.

7. All other averments made in the complaints were denied in toto.
8. 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.

E. Jurisdiction of the authority

9. 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

10. 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

11. 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.

12. 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.

F.Findings on the objections raised by the respondents.

F.I Objection regarding maintainability of complaint.

13. The counsel for the respondents have raised an objection that the complaint is barred by limitation as the complainant has made the payment back in 2010. The issues with respect to the same were to be raised in a time bound manner. Hence, the complaint is not maintainable on the above-mentioned ground.

14. On consideration of the documents available on record and submissions made by the party, the authority observes that the as per proviso to section 3(1) of Act of 2016, ongoing projects on the date of commencement of this Act 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.

The relevant part of the above Section is reproduced hereunder: -

3.(1)...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;

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.

15. It is important to note that despite receipt of consideration of Rs. 49,50,000/- against the booked plot way back in 2010, and the respondent has failed to handover the possession of the allotted plot to the complainants. Thus, the cause of action is continuing till date and recurring in nature.
16. 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 complainants.

- G.II To direct the respondent to execute the BBA and allot specific plot number within 30 days.**
- G.III To direct the respondents to also handover physical possession of the plot within a reasonable time.**
- G.III Direct the respondent to pay delay possession charge alongwith prescribed rate of interest**
- G.IV Direct the respondent to execute conveyance deed in favour of the complainant.**

17. The above mentioned reliefs no. G.I, G.II, G.III & G.IV as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
18. The complainants had booked a plot admeasuring 300 sq. yards. in one of the futuristic projects of respondent by paying an amount of Rs.49,50,000/-. On 17.08.2010, the respondent issued a payment receipt for the payment of Rs.49,50,000/-. It is important to note that no plot buyer agreement has been executed between the parties. The complainant has paid Rs.49,50,000/- as booking amount to book a plot in the futuristic project in the year 2010 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.49,50,000/- since 2010 has been in custody of the money paid for allotment of the plots and has been enjoying benefits out of it.
19. Now the question before the authority is whether the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of The Contract Act, 1872 and which provides that:
- "Every promise and every set of promise forming the consideration for each other is an agreement."*
20. Further, section 10 of the Act of 1872 defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:
- "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not herby expressly declared to be void."*
21. There are a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor

executed any builder buyer's agreement. The holders of those receipt/allotments are harassed a lot to act on the basis of the documents issued by the developer and has to run here and there to initiate any civil or criminal action against the builder. Most of such cases relate to the period before the Act, 2016 came into existence. Infact, the very purpose of enacting the legislature was to address such malpractices and bring them to an end. After the enforcement of the Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

22. Further, the Hon'ble Punjab and Haryana High Court, Chandigarh in CWP No. 24591-2024 titled as M/s Ramprastha Developers Private Limited and Ors. and State of Haryana and Ors., the Hon'ble Court observed that the statutory meaning of "allottee" covers both actual and prospective allottees, in respect of ongoing or future projects. It specifically held that:

" 27 Though the learned counsel for the petitioners have vehemently argued before this Court, that the present respondent is not an allottee, since it becomes displayed by Annexure P-33, contents whereof also become extracted hereinabove, that he has only tendered money in respect of prospective projects, project and when evidently no prospective project have ever been floated at the instance of the present petitioners, thereby at this stage, stage there was no activated cause of action vesting in the present petitioners. However, the said argument is also rudderless nor has any telling effect vis-à-vis the locus standi of the present respondent to institute the subject complaints. The reason being that, when within the ambit of the statutory meaning assigned to an 'allottee', whereby becomes covered also potential as well as prospective allottees, vis-a-vis the prospective projects, thereby not only in respect of ongoing projects, but also in respect of projects to be launched in future... the present respondent but became a person/allottee in terms of Annexure P-3 he became promised to be made, the 18 of 19 Neutral Citation No:=2025:PHHC:019155-DB CWP-24591 24591-2024 allotments vis-a-vis projects to be undertaken in future, whereby also the present respondent was a person/allottee person/allottee who would subsequently acquire the subject project through sale or transfer thereof being made in his favour "

23. The Hon'ble High Court concluded that the respondents, having paid consideration for a plot in a future potential project, fell within the statutory definition of allottee, despite the absence of a registered project.
24. In the present complaint, the complainants intend to continue with the allotment and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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 delay, till the handing over of the possession, at such rate as 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 may be prescribed."*

(Emphasis supplied)

25. **Due date of possession:** As per the documents available on record, no BBA has been executed between the parties, and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** :-

"Moreover, 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 i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of

service on the part of the appellants and accordingly the issue is answered."

26. In the instant case, the promoter has allotted a plot in its project vide agreement dated 17.08.2010. In view of the above-mentioned reasoning, the date of execution of buyer agreement ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the plot comes out to be 17.08.2013.

27. **Admissibility of delay possession charges at 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. Rule 15 has been reproduced as under.

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

28. 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.

29. 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., 26.08.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

30. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(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;"*

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondents /promoter which is the same as is being granted to the complainants in case of delay possession charges.
32. 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 respondents is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. The due date of possession comes out to be 17.08.2013.
33. It is pertinent to mention over here that even after a passage of more than 9 years (i.e., from the date of buyer agreement till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which

it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of 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.

34. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondents is established. As such the complainants are entitled to delay possession charges at the prescribed rate i.e., @10.85% p.a. w.e.f. 17.08.2013 till offer of possession plus 2 months after obtaining completion certificate from the competent authority or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules. The respondents are further directed handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.
35. The complainant is further seeking relief with respect to handing over of possession of plot as well as execution of conveyance deed in their favour. Section 17(1) of the Act obligates the promoter to handover the physical possession of the plot and to get the conveyance deed executed in favour of the allottee and the same is reproduced below:

"17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under

this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

36. However, in the instant case, 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. The respondents/promoter are under an obligation as per Section 17 of Act to handover possession of the plot and to get the conveyance deed executed in favour of the complainants. Thus, in view of the above, the respondents/promoter is directed to handover possession of the allotted plot admeasuring 300 sq. yards to the complainants after obtaining CC/part CC from the competent authority and to execute the conveyance deed in favour of complainants within a period of three months from the date of issuance of completion certificate/part completion certificate, upon payment of the outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per Section 17 of the Act.

G.V To Impose penalty on the respondent for not complying to the terms of RERA Act, 2016 and involving in unfair practices under Section 61 of the RERA Act, 2016

37. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above-mentioned relief.

H. Directions of the authority

38. 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):

- i. The respondents are directed to allot a specific plot number and execute builder buyer's agreement within a period of 30 days. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, he will be liable to make available to her a plot of the size, as booked, specifying the future upcoming project wherein specify plot number shall be provided in a specified time framed.
- ii. The respondents are directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 17.08.2013 till offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.
- iii. The arrears of such interest accrued from 17.08.2013 till the date of order by the authority shall be paid by the respondents to the complainant within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoters to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoters, in case of default shall be charged at the prescribed rate i.e.,

10.85% by the respondents which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(zb) of the Act.

- vi. The respondents are directed to handover possession of the allotted plot and to execute conveyance deed in favour of the complainants on payment of stamp duty and registration charges within three months after obtaining completion/part completion certificate from the competent authority.

39. Complaint stands disposed of.

40. File be consigned to registry.



Ashok Sangwan
Member



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.08.2025

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