

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short 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 project, details of sale consideration, 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.	Parklands, Sector 75-89, Faridabad
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	1.M 1-4 admeasuring 458 sq. yds.
5.	Date of Booking	17.04.2006



6.	Date of builder buyer agreement	12.02.2008
7.	Due date of possession(24 months)	12.02.2010
8.	Possession clause in BBA	<p>Clause 22.1</p> <p><i>That the possession for the said plot as proposed to be delivered by the Seller/Confirming party to the purchaser within about 24 months from sanctioning of the service plans of the entire colony, simultaneous to the execution of sale deed subject however to force majeure and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.</i></p>
9.	Basic sale consideration	₹ 42,86,880/-
10.	Amount paid by complainant	₹ 64,59,480/-
11.	Offer of possession	09.11.2012.
12.	Occupation/Completion Certificate	Not obtained.

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

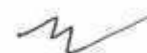
3. That complainant registered for a 500 Sq. yds plot in the project "BPTP Parklands" located in Faridabad, Haryana and paid Rs.12,18,750/- towards booking amount to the respondent on 17.04.2006.

4. Plot buyers agreement was executed between the parties on 12.02.2008 for plot No. LM 1-4 admeasuring 458 sq. Yds. It is pertinent to mention here that by this time the respondent had demanded and collected a huge amount of Rs.27,86,472/- against Basic Sale Price of Rs.42,86,880/- leaving no option with the complainant but to sign on the pre- printed unilateral document (PBA) having inequitable clauses. Copy of the receipts issued between 17.04.2006 to 12.02.2008 are enclosed as Annexure P-1. Copy of the PBA dated 12.02.2008 is annexed as Annexure P-2.
5. That at the time of booking as well as allotment it was represented that the plot would be handed over within two years. However, at the time of entering into agreement the delivery of possession of plot was pushed by two years and it was now linked with the sanctioning of the service plans of the entire colony by the competent authority. It is submitted that the demands were not linked with the sanction of service plans therefore, the handing over of possession also could not have been linked with the sanction of service plans. Getting the service plans sanctioned from the competent authority is the responsibility of the company and there is no check if the sanction of service plans is delayed due to the inaction or omission on the part of the company. In case there is delay in applying or the application is deficient for any reason and the sanction of service plans is delayed by the competent authority on account of reasons



attributable to the developer the allottee cannot be made to suffer for such dereliction on the part of the developer. There is no role whatsoever of an allottee in so far as sanction of service plans is concerned. Therefore, it is an unfair trade practice on the part of the builder by linking the delivery of the possession with the sanction of service plans and the same should be linked to payment of money paid at the time of booking as it is at that time the builder had represented for delivering the possession within 24 months of booking.

6. That complainant paid an amount of around Rs.48 Lac within a period between 2006 and 2008 and as and when demanded by the respondent. The plot was to be handed over in a period of 24 months from the date of booking. However, the respondent after receipt of huge amount of money Rs.27,86,472/- unscrupulously and mischievously got a unilateral clause inserted in the PBA under which the possession was now to be delivered within 24 months from sanction of service plans of entire colony.
7. That without completing the development works and obtaining completion certificate from the competent authority or getting the service plans of the entire colony sanctioned as a pre-requisite as envisaged in clause 22.1 of the PBA the respondent issued a letter dated 09.11.2012 as offer of possession. It is submitted that it was a void document as no possession could have been legally offered without obtaining the completion certificate and also without getting the service plans of the



entire colony approved/sanctioned by the competent authority. It was only to extract more money from the complainant as the offer was accompanied with a demand of Rs.10,44,401/- towards various charges under various heads. Complainant again fell into the trap of the respondent as he was again made to believe that the possession was being offered after completing all the pre-requisites. Copy of the impugned offer of possession dated 09.11.2012 alongwith demand/statement of account is annexed as Annexure P-3. Complainant paid the demanded money to the respondent including the stamp duty charges. Copies of the receipts issued by the respondent are annexed as Annexure P-4.

8. In January 2013 after paying all that was demanded at the time of sham offer of possession the complainant requested the respondent to arrange for a site visit so that he could satisfy himself with the completion of the development works and all other specifications as promised at the time of booking, allotment and execution of PBA. On enquiries made by the complainant from the government departments it has surfaced that on the date of sham offer of possession the development works were far from over and the respondent had no approvals or sanctions or permissions from the competent authorities which are sine qua non for enabling the builder to offer a valid possession in a licensed colony/project. Copy of the letter dated 27.12.2012 issued by the complainant raising his

concerns about non completion of infrastructure development works is annexed as Annexure P-5. Copies of reminders dated 09.01.2013 and 02.02.2013 are annexed as Annexure P-6 and Annexure P-7 respectively.

9. That offer of possession records that a demand of Rs.4,57,700/- has been made towards setting up of sewerage treatment plant and 220 KV electric sub station. If the STP was yet to be setup and electric sub station was yet to be erected it is incomprehensible that the plot and the colony were ready for handover to the allottees. The clauses of the offer of possession mutually inconsistent and contradictory. If the STP and essential infrastructure for electricity supply were yet to be established it implies that the plot is not ready for handing over of possession.
10. That it is submitted that the offer of possession was accompanied only with a statement of account cum demand letter. It was without approved layout cum demarcation plan, approved zoning plan, completion/part completion certificate and approved service plans of the colony/project. In absence of all these statutory approvals the impugned offer of possession was merely a piece of paper having no value or legal sanctity. It is further submitted that the block LM in which the plot of the complainant is located was under freeze and had not been defreezed even until 02.03.2020 as is clear from the reply given by DTCP Haryana to the RTI application. It is beyond comprehension that if the block in which the unit was situated was under freeze than in what legal capacity the

builder could offer possession. Copy of information supplied under RTI dated 02.03.2020 vide memo no. RTI/1115-B-2020/5871 is annexed as Annexure P-8.

11. That it is submitted that the office of Directorate Town and Country Planning had issued a memo vide memo no. CTP/HUDA/DTP(N) 12436-83 dated 13.11.2007 clarifying that no possession of residential plot could be given unless the zoning plan is depicted in the possession letter. At the time of purported offer of possession, the said circular was in vogue and since it was not accompanied with worked zoning plan the offer of possession was not a valid offer but a void offer on this account alone. It is further submitted that the respondent had admitted in its email dated 24.01.2022 that the company had applied for approval of zoning plans but it was still under consideration with the competent authority. The zoning plan approval was granted by the competent authority only on 10.10.2022. Copy of the circular issued by DTCP dated 13.11.2007 is annexed as Annexure P-9 and copy of the email dated 24.01.2022 is annexed as Annexure P-10. Copy of the zoning plan approval dated 10.10.2022 is annexed as Annexure P-11.

12. That when the complainant requested the respondent to handover the plot in question along with all the approvals and sanctions as obtained from competent authorities, the respondent handed over an indemnity bond and an undertaking to be signed by the complainant. The undertaking

essentially was to release the company from any liability owing to non approval of zoning plans and further to release the company for deficiency in service in as much as for non completion of infrastructure work in the colony. The execution of these undertakings would have meant that the complainant would have no right to claim damages in future irrespective of the fact that the respondent was deficient in services and had failed to perform his part in the contract. The complainant refused to sign the said undertakings and due to which the company has continued to harass the complainant by not handing over physical possession of the plot in question. The whole responsibility for their non-execution was that of the Respondent. The primary reason of not giving possession of the plot was to put pressure and coerce the complainant to sign documents that would enable the Respondent to escape responsibility for their acts of defaults, breach of terms of agreement etc. Copy of the pre-printed undertakings issued in 2016 by the respondent are annexed as Annexure P-12. The email sent by the respondent on 25.01.2018 stating that the company would send a communication with regards to registration of plot and complainant was asked to wait. It is submitted that the wait is still continuing and seems to be unending. Copy of email dated 25.01.2018 is annexed as Annexure P-13.



13. That offer of possession was made without obtaining completion certificate from the competent authority. In fact the application filed by the respondent for grant of completion certificate came to be rejected by the DTCP vice memo dated 25.07.2018. Further, development works are still not complete as the license granted for developing the project has been extended till 17.01.2025. These facts establish that offer of possession dated 09.11.2012 was merely for a paper possession as the respondent was not in position to handover the physical possession of plot in question. Copy of memo no. CC-77-PA(SS)-2018/22031 dated 25.07.2018 rejecting the application for grant of completion certificate is annexed as Annexure -P-14. Copy of memo no. LC-706-PA(SK)-2023/15909 dated 25.05.2023 extending the license till 17.01.2025 is annexed as Annexure P-15. That on 15.03.2023 under reply to an RTI application submitted by the applicant to the office of Director General, Town and Country planning has informed that no part completion/completion certificate has been issued in favour of the respondent herein for License no. 413-442 of 2006. Copy of the reply dated 15.03.2023 vide Memo no. RTI-4623/2023/7701 is annexed as Annexure P-16.

14. Complainant was put to loss by the respondents by way of overcharging for services provided/not provided and by delays in meeting their obligations. The various items on which the complainant was

overcharged by the respondent and the items on which complainant is entitled to interest and compensation are described hereunder:

I. External Development Charge (EDC)

Respondent collected a total amount of Rs.11,04,000/- from the complainant towards External Development Charge (EDC) and Enhanced External Development Charge (EEDC) at the rate of Rs.2400 per sq. yd for the plot area of 460 sq.yds. The Haryana Urban Development Authority (HUDA) had approved EDC rate of Rs.5.96 lacs per gross acre for year 1994 in respect of residential plotted development colonies which was to be increased by 10% on compoundable basis for subsequent years. HUDA, vide Memo dated 25.05.2011 revised the EDC rate for plotted development to Rs.58.21 lacs per gross acre for the Calendar year 2009 to be reduced/increased by 10% p.a. on compoundable basis for preceding / future years. Copy of HUDA Memo dated 25-05-2011 is annexed as Annexure P-17.

Respondent has arbitrarily and wrongly collected an amount of Rs.11,04,000/- from the complainant in respect of EDC. The excess charged amount is Rs.942540/- in respect of alternative (i) and Rs.726340/- in respect of alternative (ii). Complainant claims that the excess charged amount of Rs.726340/- (alternative ii) is to be refunded to the claimant immediately; and the balance amount of Rs.216200/-

(difference between the two alternatives) be deposited by the respondent with the State Government in the form of a fixed deposit to be refunded to the claimant or to be paid to the State Govt. depending upon the Hon'ble High Court's decision on the payable EDC rate.

That the complainant is entitled for interest charges to be paid by the respondent @ 18% p.a. compounded quarterly on the basis of provision under Clause 12 of the PBA for all refundable amounts for the period from the date of payment by the complaint upto the date the amounts are actually refunded by the respondent to the complainant.

II. Infrastructure Development Charges:

The State Govt. of Haryana did not levy any Infrastructure Development Charge in respect of the plotted colony. The amount of Rs.204700/- collected by the respondent from the complainant as Infrastructure Development charge was absolutely wrong, arbitrary and unjustified. The complainants are entitled to refund of the whole amount of Rs.204700/- paid by him along with interest @ 18% p.a. compounded quarterly on the basis of provision under clause 12 of the PBA for the period from the date of payment by the complainant upto the date when refund is made by the respondent.

III. Electrification and STP Charges :

The Haryana Development and Regulation of Urban Area Act 1975 under Section 2(g) specifies that the External Development Charges

include all water supply, sewerage, electric works etc. in the periphery of or outside colony area. Having already paid full amount of EDC, the complainant cannot be called upon to pay separately and additionally the so called Electrical and STP charges. The provision in the PBA under Clause (2) requiring the complainant to additionally pay for E & STP charges, being in conflict with the provision under the HDRUA Act is ultra vires, void ab-initio and infructuous.

Therefore, the amount of Rs.457700/- collected by the respondent from the complainant for the items of Electrification and STP charge is unjustified and iniquitous and thus refundable. The complainant is also entitled to receive from the Respondent, interest on the refundable amount @ 18% p.a. Compounded quarterly on the basis of provision under clause 12 of the PBA, for the period from the date the payment was made by the complainant upto the date when refund is made by the Respondent.

IV. Stamp Duty:

The respondent collected an amount of Rs.2,81,000/- from the complainant as Stamp Duty for registration in the year 2012-13, but did not deposit this amount with the registration authority of the State Government. The complainants are entitled to refund of this amount along with interest @ 18% p.a. compounded quarterly on the basis of provision under clause 12 of the PBA for the period from the date of

payment by the complainant upto the date the amount is refunded by the Respondent. It is undisputed that the stamp duty has been paid by the complainant to the respondent in good faith and on the representation of the respondent that the stamp duty is payable to it. However, legally the stamp duty is revenue for the State Government builder has no business in collecting and retaining the amount towards stamp duty.

V. Conveyance Deed Charge:

The Respondent collected an amount of Rs.15700/- from the complainants in January 2013 as charges towards conveyance deed but did not execute the deed. The complainant is entitled to refund of this amount along with interest @ 18% p.a. compounded quarterly.

VI. Excess Charged Amount of Interest

The respondent vide letter dated 09.11.2012 had claimed an interest of Rs.41,991/-. It is submitted that the complainant had contested the said claim as being unjustified and illegal. Respondent did not offer any explanation on the said amount of interest and neither did it remove the said demand from its future statement of accounts shared with the complainant. The said demand towards interest is illegal, unjustified and is without any basis and thus it deserves to be set aside.

VII. Utility Connection Charges (UCC):

The Respondent collected an amount of Rs.15000/- from the complainants in January 2013 as UCC without completing development

works. In accordance with provision under Clause 5 of the PBA, all utility services are to be provided by the Government or the concerned local authority and the cost thereof is to be borne by the complainant. There is, therefore no justification for the respondent to collect any amount from the complainant. Complainant is entitled to refund of the amount of Rs.15200/- along with interest @ 18% p.a. compounded quarterly.

VIII. Compensation for Increased Cost of Construction:

Respondent was granted license on 18.01.2006 under Rule 12(2) of the Haryana Development and Regulation of Urban Area Rules, 1976 were required to complete all development works within a period of two years, i.e. by 17.01.2008. According to the information provided by the Director TCP vide letter dated 25.05.2023 the license has been renewed and extended till 17.01.2025 implying that the development works are still incomplete. The respondent has not yet handed over physical possession or executed Conveyance Deed in favour of the complainant. On account of the aforesaid reasons, the complainant has been unable to take up the work of construction of residential house on the said plot and would not be able to do so till the respondent provide him with the completion certificate and execute the conveyance deed.

Complainant is entitled to receive compensation from the respondent for the burden of increased costs on building residential house on the plot.



The amount of compensation can be estimated on the basis of permissible area of construction on the plot according to Haryana Building Bye Laws and the increase in building construction costs during the period between years 2007 and the date on which the respondent provides completion certificate and executes the Conveyance Deed. The permissible area of construction on the plot as per Haryana Building Bye- Laws is about 6000 sq.ft. The complainant reserves his right to approach the I.d. Adjudicating Officer for claiming compensation on account of increase in cost of construction, loss of opportunity, mental agony and harassment and other available grounds.

IX. Club membership Charges

Respondent has collected an amount of Rs.75000/- towards club membership charges. It is submitted that there is no club in the block in question and the amount collected towards club membership charges without there being any club at site is illegal and the amount so collected is liable to be refunded alongwith interest @ 18% per annum.

X. That respondent is levying Rs.354992/- as holding charges without their being any basis or any cause for the same. The said levy is unjustified, arbitrary and illegal and deserves to be quashed. Copy of the demand dated 07.09.2023 towards maintenance (Rs.2,28,227/-) as well as remaining stamp duty (Rs.1,13,000/-) payable in BPTP is annexed as Annexure P-19.



15. That the conduct of the respondent throughout has been to indulge in flagrant violation and non-compliance of various statutory provisions. The acts and conduct of the respondent was to defraud, cheat and misguide the complainant. The respondent misled the public at large including the complainant and collected money from them by making false representations and indulging in unfair trade practices. The intention of the respondent is apparently fraudulent to cheat the complainant and the public at large. In view of the gross deficiency in service, unfair and unethical trade practices of the respondent, the complainant has been compelled to file the instant complaint before the Hon'ble Authority for protection of their interests and for grant of justice.

C. RELIEF SOUGHT

15. That the complainant seeks following relief and directions to the respondent:-

- i) Call for the records of the case;
- ii) Declare that the offer of possession dated 09.11.2012 (Annexure P-3) was a void offer as it was given without obtaining sanction of service plans of the entire project, it was without obtaining completion/part completion certificate, it was without approval of zoning plan and



without supplying layout-cum-demarcation plan of the colony and consequently quash the same;

iii) Quash the demand of holding charges and maintenance charges and interest on maintenance charges being arbitrary, unjustified and illegal;

iv) Direct the respondent to pay delay penalty for every month of delay on Rs.64,59,480/- from expiry of two years from the date of first payment i.e. 17.04.2006.

v) Direct the respondent to refund the overcharged amount on account of EDC, EEDC, IDC, UCC, E & STP and Club membership Charges along with interest @ 18% per annum.

vi) Direct the respondent to hand over vacant and peaceful possession of the plot forthwith.

vii) Any other relief which the complainant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.07.2025 pleading therein:

16. That the complainant expressed his interest and willingness to purchase a plot in the project of the respondent under the name of "Parkland", sector-83, Faridabad, Haryana vide an application form dated 17.04.2006.



That in furtherance of booking form submitted by the complainant, a plot bearing no. 4, Block-LM 1, Phase-2, admeasuring 458 sq. yds was allotted on the basis of tentative layout plan. Copy of booking form is annexed as Annexure R1.

17. That the parties mutually, willingly and voluntarily entered into a plot buyers agreement on 12.02.2008. Relationship was purely contractual and flowed from the explicitly agreed terms and conditions of the agreement. Copy of Plot buyers agreement is annexed as Annexure R-2.

18. That the complainant willingly executed an affidavit dated 31.12.2007 wherein the complainant affirmed his obligation to make timely payment of basic sale price and other charges. As detailed in clause (iv), (v) and (vii) of the said affidavit, the complainant undertook that they shall pay all the water connection charges, sewer connection charges, storm water connection charges, road cutting charges, IDC, VAT, statutory taxes, liabilities or charges related to the said plot. Copy of affidavit is annexed as Annexure R-3.

19. That the respondent herein post obtainment of layout plan dated 11.03.2011 and completion of all essential services in the project, offered possession of the plot to the complainant herein on 09.11.2012. Copy of offer of possession dated 09.11.2012 and layout plan dated 11.03.2011 is annexed as Annexure R-4.



20. That the complainant was well aware that timely payment of instalments was the essence of the PBA, accordingly the respondent raised demands upon reaching respective milestones but the complainant unlawfully and malafidely failed in making the complete payments of installments. Demand letters, payment receipts and reminders are annexed as Annexure R-5.
21. That since the complainant failed to make timely payment of instalments and to take possession of the plot, the complainant stood in fundamental breach of the terms of the PBA as detailed hereinabove as well as acted in violation of the affidavit executed by the complainant.
22. That the layout was approved vide drawing no. DGTCP-2414 dated 11.03.2011. Thereafter, vide letter dated 09.11.2012, the Complainant was offered possession of the Plot and requested to execute the conveyance deed. That the Respondent has validly offered possession to the Complainant and requested to execute the conveyance deed after the approval of layout plan.
23. That reminder were sent to the Complainant for payment of outstanding balance against provisional booking after sending offer of possession on 06.12.2012, however the Complainant failed to pay the dues. Copy of reminder dated 06.12.2012 is annexed herewith as Annexure R6.



24. That the Department of Town Country 836(13/2612/3903) has categorically specified the stage at which conveyance deed of plots can be executed by the developer by noting as follows:

In reference to the above referred clarification sought, I have been directed to inform that colonizer can execute the conveyance deed in respect of any plot in residential plotted colonies after obtaining license and approval of layout plan by the Director, Town and Planning, Haryana.

A copy of the DTCP's Memo No. Misc.-826(1.00sc)/2022/3903 is annexed and marked as Annexure R7.

25. That since conveyance deed can be executed after obtaining layout plan, it is obvious that the offer of possession and request for execution of conveyance deed can be made post receipt of layout plan as has been done by the answering Respondent in the present matter.

26. That with reference to an application the Chief Engineer- 1, HSSVP, Panchkula, wherein in its report, the status of the completion and development of the services were marked as operational/functional therefore it is evident that the Project is fully developed and all the basic services like water supply, sewerage, SWD, Roads, Street Lighting, Horticulture have been provided and are fully functional. A copy of the Chief Engineer dated 09.11.2017 is annexed as Annexure R8.



27. That under such report, it has been categorically noted by the CI, that
“all internal services have been completed by the coloniser... the services laid are operation/functional and the same has been checked at site”.
28. That upon an Offer of Possession being offered to the Complainant, it was the obligation of the Complainant to make payment of the balance sales consideration and take the handover of the possession of the Plot.
29. That it needs to be categorically noted that the Complainant was bound to make the due and timely payment against the Unit. It was only on the categorical representation, assurance, and warranty given by the Complainant in respect to timely payment that the Unit was allotted to the Complainant. The obligation of the Complainant to make the timely payment also arose from Section 19 (6) and 19(7) of RERA Act.
30. That all the charges demand by the respondent are completely valid and as per the clause of the PBA and affidavit willingly executed by the complainant. Relevant clause of PBA are Clause 2.2-IDC, Clause 2.4-IDC, Clause 2.5-Electrification and STP charges, Clause 2.6-stamp duty, Clause 12-Excess amount of interest, Clause 2.5-Utility connection charges, Clause 37-Club membership charges.
31. That the respondent despite facing various difficulties and default applied for grant of completion certificate of project on 07.01.2014.
32. That the respondent in bonafide conduct has already made request to come forward and execute the conveyance deed. Complainant has failed

to come forward and execute the conveyance deed. Complainant is still under default has is liable to make the balance payment of Rs. 4,66,116/- excluding the interest as is evident from statement of accounts dated 07.04.2025. A copy of the statement of accounts dated 07.04.2025 is marked and annexed herewith as Annexure R-9.

33. That in furtherance to the aforesaid contentions, it is submitted that it is an established principle of law that the law assists those who are vigilant to protect their rights. The Doctrine of Delay and Laches provides that all claims should be brought before the respective courts/forums within reasonable time frame and no litigant who approached court/forum belatedly without any justifiable explanation should be allowed to seek benefit of his negligence, similar genesis flows from the provisions of Limitation Act, 1963.

34. That after the offer of possession, the complainant did not challenge the same and it was only after more than a decade that the present complaint was filed. Complainant had been sleeping on his rights for years and hence, no equity can be granted in favor of the complainant in such a circumstance, the present complaint is liable to be dismissed.

**E. ARGUMENTS OF LEARNED COUNSEL FOR THE
COMPLAINANT AND RESPONDENT**



35.Ld. counsel appearing on behalf of both parties reiterated the submissions as made in their pleadings and prayed for relief of possession alongwith delay interest relying upon fact that completion certificate has not been granted to the project in question.

36.Ld. counsel for respondent referring pleadings and arguments of complainant's counsel stated that complainant himself has demonstrated that he cannot take possession of unit in absence of completion certificate. As per pertaining consequences the only relief which may be allowed in favor of complainant is refund of paid amount. Further, he argued that even if complainant's proposition is accepted that wrong/invalid offer of possession was made to him in year 2012, then the cause of action to agitate the same arose in year 2012 only. Complaint has been filed in year 2025, i.e. after delay of 13 years. He relied upon judgment dated 07.08.2025 passed by Hon'ble Uttar Pradesh Real Estate Regulatory Authority in Complaint no. LKO162/04/118810/2024 along with another judgment dated 09.07.2025 passed by Hon'ble Real Estate Regulatory Authority Gurugram in Complaint no. 1884/2024 in support of his contention that last payment was made by complainant in year 2012 and complaint has been filed after delay of 13 years on 13.01.2025. In said judgment, it has been held that complainant cannot be allowed to sleep over its right indefinitely and wake up at any time he pleases. The litigant should



initiate litigation within reasonable time to press his rights under normal circumstances. Hence, complaint is barred by limitation.

F. ISSUES FOR ADJUDICATION

37. Whether the complainant is entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

If Yes, the quantum thereof.

G. OBSERVATIONS OF THE AUTHORITY

38. As per record, respondent has taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgment of Apex court Civil Appeal no. 4367 of 2004 titled as *MLP Steel Corporation v/s Commissioner of Central Excise* where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfill its obligations qua delivery of possession of unit because of which the cause of action is re-occurring.



39. As per facts and circumstances, complainant in this case had booked a plot on 17.04.2006 and was initially allotted unit/plot bearing no. LM 1-4, measuring 458 sq. yds. in the project being developed by the respondent namely 'Parklands' situated at Faridabad by paying booking amount of Rs 12,18,750/-. Plot buyer agreement was also executed between the parties for the said unit on 12.02.2008 for a basic sale price of Rs 42,86,880/-. Complainant has paid a total amount of Rs 64,59,480/- against basic sale price of unit. An offer of possession was made to complainant on 09.11.2012 with demand of Rs 10,44,401/- (inclusive of stamp duty charges of Rs 2,81,000/- and conveyance deed registration charges of Rs 15,700/-). Complainant has honored the said offer by making payment of Rs 10,02,410/- on 27.12.2012. It is the contention of the complainant that the respondent has failed to complete the project and thus delayed delivery of possession of the booked unit beyond the time period stipulated in the agreement. Hence, the present complaint seeking possession of the booked unit along with delay interest.

40. As per clause 22.1 of the plot buyer agreement, possession of the unit was to be delivered within a period of twenty four (24) months from the date of sanction of service plans. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been



subjected to sanction of service plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. The respondent in its reply has not even provided the date of approval of service plans. Clearly, from the conduct of the respondent, the *Doctrine of Mischief* comes into play. The vague terms in the BBA, especially with regard to the due date of delivery are meant to frustrate this contract and have an ambiguously long delivery date. Thus, the contention of the respondent to calculate deemed date of possession from the date of sanction of service plans is rejected. In light of these facts, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 12.02.2010.

41. As per observations recorded in the preceding paragraph, possession of the unit (Plot no. LM 1-4) should have been delivered to the complainant by 12.02.2010. However, respondent had offered possession of unit on 09.11.2012 along with demand of Rs 10,44,401/- (inclusive of stamp duty charges of Rs 2,81,000/- and conveyance deed registration charges of Rs 15,700/-). Complainant has honored the said offer by making payment of Rs 10,02,410/- on 27.12.2012. Thereafter, letters dated 27.12.2012 and 09.01.2013 were sent by complainant to



respondent raising his grievances in respect of basic amenities and charges. Contents of letters dated are reproduced below for reference:-

Letter dated 27.12.2012

I went to the site but could not locate the pocket LM. I visited the site office also but could not find any one willing to accompany me to help locate the plot. In view of the above, I am not too sure if the plot as written by you is ready for possession and all the infrastructure for example demarcation of plots, roads, street lights, water, electricity and sewage etc. are in place.

Also please arrange to provide me an updated statement confirming details of my payment made to BPTP till date.

Letter dated 09.01.2013

Against your demand of INR 10,44,401 vide above letter (copy enclosed), I have deposited amount of INR 10,02,410/- as per payment details given in my enclosed letter. An amount of INR 41,991 towards interest calculated upto date mentioned under sr. no. 11 as in had contested the same vide my letter dated 14.06.2012. Despite your acknowledged of receiving the same no clarification has been provided till date and hence the shortfall in amount.

However the 2 receipts issued to me against the above deposit do not mention the receipts of respective amounts against each of the given heads, please clarify why there is a deviation. This would cause confusion



in future settlement of account. Please explain and arrange to issue receipt mentioning the correct head under which the amount is received.

42. Thereafter, complainant had received information about approvals of project by way of various RTI from department of Town and Country Planning, Chandigarh. First, is RTI reply dated 26.05.2020 whereby it is mentioned that *zoning plan of block LM in Sector-83 is not approved so far. No completion certificate has been granted so far to the block-LM.* Second, RTI reply dated 21.07.2022 whereby *copy of demarcation plan enclosed. The zoning plan is not approved yet.* Third, is copy of zoning plan approval dated 10.10.2022 annexed as Annexure P-11. Fourth, is RTI reply dated 15.03.2023 whereby it is mentioned that regarding *completion of development works, it is informed that part completion certificate for the colony bearing license no. 413-442 of 2006 has not been issued till date. No part completion/completion certificate for the colony bearing license no. 413-442 of 2006 has been issued till date.* As such, respondent itself in its reply admits the fact that builder had applied for completion certificate on 07.01.2014 however same has not been received till date.

43. It is an admitted fact that the valid possession of the plot in question duly supported with completion certificate has not made till date to complainant. It is pertinent to mention here that no specific reason for non-approval/grant of completion certificate has been detailed out either

in the written statement or at the time of arguments. Fact herein is respondent is utilizing money of complainant since 2012 without issuing any letter/status report on approvals of booked plot. Significantly, the respondent has also expressed its willingness to refund the amount deposited by the complainant along with applicable interest. The complainant is insisting upon possession of the booked plot only. Respondent who is in receipt of a total amount of 64 lacs since the year 2012 has not even made sincere efforts to settle the dispute with complainant either by offering a reasonable number of options of alternate plots to choose from or by giving refund of amount with interest. It is the respondent who has failed to develop the booked plot till date.

44. With regard to the contention of the complainant in respect of disputed demands, it is observed that complainant had already made the payments between years 2008-2012 without raising any protest/objection. However, offer dated 09.11.2012 was not a valid offer of possession, hence respondent was not entitled to raise these charges. Further, the disputed charges are being carefully examined by the Authority and observes as follows:

- i. With regard to the demand raised by the respondent on account of club membership charges of ₹ 75,000/-, Authority observes that club membership charges can only be levied when the club facility is fully

operational with all amenities. No documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Complainant has submitted that the proposed club has not been constructed till date. Respondent has not placed any document/photograph to negate the claim of the complainant. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question and the demand for club charges is being made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside. However, respondent will become entitled to recover it in future as and when a proper club will become operational at site.

- ii. With regard to demands raised on account of Electricity connection charges and Electrification and STP charges it is observed that vide clause 2.5 sub-clause 'b' and 'c' of the buyer's agreement dated 12.02.2008 the complainant had agreed to pay these charges to the respondent. Since these charges are in consonance with the buyer's agreement, the complainant cannot shy away from their obligation of making requisite payments. Hence, these charges are payable by the complainant.
- iii. With regard to demands raised on account of LDC/IDC charges, it is observed that these charges are in consonance with the terms of the

agreement as per clauses 2.2 and 2.4 and hence are payable on the part of the complainant.

- iv. With regard to demands raised on account of Utility connection charges of Rs 15,000/-, it is observed that these charges are in consonance with the terms of the agreement as per clause 2.5 and hence are payable on the part of the complainant.
- v. With respect to interest of Rs 41,991/-, it is observed that respondent has not provided any basis/justification as to how this figure had been arrived at. Neither any documentary evidence has been attached in support of it. Hence, same is quashed.
- vi. Conveyance deed charges Rs 15,000/- and Stamp duty charges Rs 2,81,000/- - respondent collected these charges in year 2012 but did not execute conveyance deed. Firstly, as per section 18 of the RERD Act, the complainant cannot seek both possession and refund of stamp duty charges. The latter are indelibly wedded to the possession and conveyance deed. Since the complainant's main relief is that of possession and conveyance deed, the responsibility of paying stamp duty charges are upon him. Therefore, this amount cannot be refunded, in view of his relief clause. However, it is on record that upon demand by the respondent, the complainant had paid the amounts as far back as in 2012. It has not only not got the conveyance deed executed as promised, but has also used this amount since 2012. Therefore, the respondent is directed to make the



stamp duty charges and the conveyance deed charges and not charge the same to the complainant. If there is any increase in these charges since 2012, the same will be borne by the respondent in view of the above facts.

vii. With respect to holding charges and maintenance charges, it is observed that since proper handing over of legal possession has not been done till date in favor of complainant so the respondent is not entitled to collect these charges. Maintenance charges will remain payable w.e.f valid offer of possession only.

viii. In the present complaint, complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Even in the prevailing situation, the complainant has chosen to seek possession of the plot allotted to him and is insisting upon interest for delay in handing over of the possession.

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"

45. The Authority observes that the respondent has severely misused its dominant position. Builder buyer agreement of the plot was made on 12.02.2008, due date of possession was 12.02.2010. Now, even after the lapse of 16 years, the respondent is not able to offer valid possession to

the complainant. Complainant however is interested in getting the possession of the booked plot. He does not wish to withdraw from the project. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the apartment/plot/unit, the allottee can also demand delay interest along with monthly interest and the respondent is liable to pay the same for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 12.02.2010 till the date on which a valid offer is to be sent to the complainant after obtaining completion certificate.

46. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. 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;

47. Rule 15 of IIRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “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”

48. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 21.05.2026 is 10.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

49. The Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 10.80% till and the said amount works out as per detail given in the table below

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e. 21.05.2026 (in ₹)

1.	47,45,338/-	12.02.2010	83,44,566/-
2.	7,11,732/-	11.11.2011	11,17,415/-
3.	10,02,410/-	03.01.2013	14,49,501
Total:	64,59,480/-		1,09,11,482/-
Monthly interest			57,339/-

II. DIRECTIONS OF THE AUTHORITY

50. 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 upfront delay interest of ₹ 1,09,11,482/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire paid amount, monthly interest of ₹ 57,339/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining completion certificate.
- ii. Respondent is directed to offer possession of plot to complainant within 30 days of receipt of completion certificate. Complainant will remain liable to pay balance consideration amount to the respondent at the time when possession is offered to the complainant. This will not

include any stamp duty charges or conveyance deed charges as discussed in para 44 (vi).

- iii. The rate of interest chargeable from the allottees/complainant by the promoter, in case of default shall be charged at the prescribed rate, i.e., 10.80% by the respondent/promoter which is the same rate of interest which the respondent/promoter shall be liable to pay to the allottees/complainant.
- iv. The respondent shall not charge anything from the complainant which is not part of the agreement to sell
51. Disposed of. File be consigned to record room after uploading on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


PARNEET S. SACHDEV
[CHAIRMAN]