

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

Complaint no. : 2438 of 2023
Date of complaint : 30.05.2023
Date of order : 25.09.2024

Pranav Goel,
R/o: - Flat No. 32, GH-7, Sector-5, MDC,
Panchkula, Haryana-134114.

Complainant

Versus

M/s Ramprastha Promoters & Developers Pvt. Ltd.
Regd. Office At: - C-10, C Block, Market Vasant Vihar,
New Delhi-110057.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sushil Yadav (Advocate)
Divyanshu Kumar (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Cannot be ascertained
2.	Project area	Cannot be ascertained
3.	Plot no.	Not provided
4.	Plot area admeasuring	300 sq. yds. (Page no. 12 of the complaint)
5.	Date of booking	04.09.2006 (page 12 of complaint)
6.	Allotment letter	Not provided
7.	Date of execution of plot buyer's agreement	Not executed
8.	Possession clause	Not Provided
9.	Due date of possession	04.09.2009 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
10.	Total sale consideration	Rs.27,60,000/- [As per CRA on page 8 of complaint]
11.	Amount paid by the complainants	Rs.27,60,000/- [As per receipt dated 04.09.2006 on page 12 of complaint]
12.	Occupation Certificate	Not Provided
13.	Offer of possession	Not Provided

B. Facts of the complaint

3. The complainant has made the following submissions: -
- I. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "Ramprastha City,

Sector 37C & 37D, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, the complainant booked a plot measuring 300 sq. yds. in aforesaid project of the respondent for total sale consideration is Rs.27,60,000/-.

- II. That the complainant made payment of Rs.27,60,000/- to the respondent vide different cheques and other mode, the respondent duly accepted the payment and issued receipt no. 111 dated 04.09.2006 against the amount paid and agreed to allot plot admeasuring 300 sq. yds in sector 37 D, Gurugram to the complainant.
- III. That at the time of booking of the aforesaid plot and after the payment, the respondent had agreed to deliver the possession of the plot within 30 months from the date of booking of the plot i.e. 04.09.2006 with an extended period of 180 days i.e. 03.03.2009. The complainant regularly followed up the respondent for execution of the builder buyer agreement, but the respondent evaded the matter on one pretext or other. The respondent kept assuring the complainant that the possession of the plot will be handed over soon as the complainant had made the amount. However, for the reason best known to the respondent they never delivered the possession of plot nor executed the builder buyer agreement.
- IV. That the complainant used to telephonically ask the respondent about the progress the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see

that construction work is not in and no one was present at the site to address the queries of the complainant.

- V. That despite receiving of more than 100% approximately payments on time for all the demands raised by the respondent for the said plot and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted plot to the complainant within stipulated period.
- VI. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the plot in question along with prescribed interest on the amount deposited by the complainant, but respondents has flatly refused to do so.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to execute builder buyer agreement.
 - II. Direct the respondent to handover possession of the plot and to pay delay possession charges.
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 respondent has contested the complaint on the following grounds:
- i. That the complainant had approached the respondent and made inquiries regarding future projects of the respondent. That the complainants were categorically informed there is no plot available since the zoning plans have not been approved. The complainant had voluntarily sought to advance money to the respondent in

anticipation of future approval and in the hope of making speculative gains. But since the zoning plans have not been approved by the government till date, the complainant has sought to file this vexatious complaint which is completely unsubstantiated and is bereft of any material documentary evidence. The respondent 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 to the respondent so that he will get the first priority in case the development plans eventually get approved by the competent authority. The respondent has 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.

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



- iii. That from the date of payment till the date of filing of the present complaint, the complainant has never raised any demand or claim whatsoever even though the complainant 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 has now approached the Authority with concocted and fabricated story to conceal the true matrix of the situation accordingly to which the complainant has no vested right in any determinate project but has merely paid money to be allowed to participate in case the approvals had come through. The conduct of the complainant clearly indicates that the complainant's objects and intents are speculative not only behind making the payment but also behind filing the present complaint. It is shocking that the complainant is even today not claiming any refund but is trying to abuse the process of this Authority to claim hefty interest which is not tenable in law in the facts and circumstances of the present case. The complainant has no vested right to claim possession of any property as it is not yet determined and hence there is no question of any delay as alleged by the complainant. It is submitted that the delay is absolutely non-existent and imaginary under the present facts and hence, there is no entitlement of any interest whatsoever.
- iv. That further no date of possession has ever been mutually agreed between the parties. In absence of any document in the nature of a builder buyer agreement, which contains several terms and conditions including the date of possession and the consequences of default, no date of possession can be said to have been mutually agreed between the parties. It is trite in law that a party claiming default must first prove the default beyond reasonable doubt by

means of substantial evidence. The complainant has not adduced any reasonable proofs in the nature of documentary evidence which establishes the date of possession, terms and conditions of possession, default and the consequential effect of such default. It is submitted there is no possibility of execution of a builder buyer agreement because the property is indeterminate and also there are no specific terms that have been mutually agreed.

- v. That it is submitted that the complainant cannot be construed as an "Allottee" by any stretch of imagination. That, for existence of a status of an "Allottee", the pre-existing criteria is that of a subsistence of "plot" or "apartment" or a "building" and the consideration must have been towards such determinate "plot" or "apartment" or "building". That in the present case at hand, there is no pre-existing plot as alleged by the complainant. That the complainant had merely made a payment towards a future potential project of the respondent which on such date was not even in existence. Further, such advance payment by the complainant was only adopted as a measure to ensure priority over others when any such project is launched. That the complainant does not meet the criterion established by the Act, and therefore, cannot be admitted as "an Allottee" before this Authority.
- vi. That the respondent is in the process of obtaining the approvals and shall bring the plots into existence on such approval and shall offer the possession of the same but as on date, the complainant has no vested right to demand possession of the plot. The complainant always had the opportunity to take its money back but had voluntarily let its money remain with the respondent. That the objective of the RERA is not to substitute civil proceedings for plain

recovery which would otherwise fall within the jurisdiction of the Civil Court.

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

- viii. That it is submitted that the complainant is not an allottee and hence the proceedings are merely in the nature of recovery which is not maintainable before this forum. That even if it is assumed that such a claim in the nature of money is maintainable, the claim is hopelessly barred by limitation filed after the expiry of 3 years from the date of payment.
- ix. That the implementation of the project has been delayed due to various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, incorrect depiction of villages etc.
- x. All other averments made in the complaint were denied in toto.
7. 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

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

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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. Objections raised by the complainant

F.I Maintainability of the complaint for the reason that complainant is not an allottee as no allotment of unit plot was done in his favour.

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

Said provisions are:

"Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or

otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

13. On bare perusal of the definition of "allottee", it is evident that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter. Upon careful perusal of documents on record, it is revealed that the complainant had paid a sum of Rs.27,60,000/- for purchasing a plot admeasuring 300 sq. yards in future project of respondent. The fact that the multiple payments were received by the respondent against a 300 sq. yards plot from the complainant clearly shows that there was very much an agreement to sell the 300 sq yards with the complainant. In the present case, the complainant is aggrieved by the act of non-compliance of this part of the contract by the respondent. Hence, objection of the respondent that complaint is not maintainable stands rejected.

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

14. The respondent raised another objection that complaint is not maintainable as there is "no agreement to sale" executed between the parties. Mere fact that an allotment letter specifying a unit no. was not issued to complainant does not mean that he was not an allottee of the respondent. Once the respondent accepted multiple payments from the complainant towards sale of a plot in its project, it was the obligation of respondent to allot him a plot no. within a reasonable time. Failure on its part to do so will not affect the rights of applicant as an allottee.
15. Even a receipt which specifies the details of unit such as area of the plot, price etc., booked by complainant will be treated as agreement for selling the property. The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered into between the promoter and the allottee. The definition is not restricted to execution of a builder



buyer agreement with respect to agreement entered into between the allottee and the promoter before RERA Act of 2016 coming into force. Accepting the payment towards a unit in present and future project shows there was a meeting of minds that the promoter will give possession in any present or future project developed by respondent. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly shows that the complainant booked a plot in respondent's future project. Accordingly, contention of the respondent that there is no agreement to sell has been executed stands rejected. Hence, relief sought by the complainant under the provisions of Section 18 of the RERA Act is maintainable.

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

16. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the same is filed after 3 years from the date of payment. The objections to the same were to be raised in a time bound manner. Hence, the complaint is not maintainable on the above-mentioned ground.
17. On consideration of the documents available on record and submissions made by the party, the authority observes that the respondent in its reply has itself admitted that the fact that it is in the process of obtaining the approvals and shall bring the plots into existence on such approval and shall offer the possession of the same. Thus, the project in question is an ongoing project, and the respondent/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for



which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

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

18. 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.
19. Moreover, it is observed that vide receipt dated 04.09.2006, it was agreed between the parties that the promoter shall give possession of a plot having size of 300 sq. yards to the complainant in its future potential project. However, despite receipt of an amount of Rs.27,60,000/- from the complainant back in 2006 against the booked plot, the respondent-promoter has not even allotted a specific plot to the complainant and also no effort has been made by it to get the plot registered in his name till date. As the respondent has failed to handover the possession of the booked plot to the complainant and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduced as under for ready reference: -

22. Continuing breaches and torts-

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

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



F.IV Objections regarding the circumstances being 'force majeure'.

21. The respondent contended that the project was delayed because of the 'force majeure' situations like passing of an HT line over the layout, road deviations and incorrect depiction of villages etc. which were beyond the control of respondent. However, no document in support of its claim has been placed on record by the respondent. Hence, all the pleas advanced in this regard are devoid of merits. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong. Therefore, the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainant

G. I Direct the respondent to execute buyer's agreement.

G.II Direct the respondent to handover possession and to pay delay possession charges.

22. The above-mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
23. The complainant had booked a plot admeasuring 300 sq. yards. in futuristic project of the respondent by paying an amount of Rs.27,60,000/-. On 04.09.2006, the respondent issued a payment receipt bearing no. 111 for the said payment. It is important to note that no plot buyer agreement has been executed between the parties. The complainant has paid Rs.27,60,000/- as booking amount to book a plot in the futuristic project in the year 2006 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.27,60,000/- since 2006 has been in custody of the money paid for allotment of the plot and has been enjoying benefits out of it.

24. 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."

25. 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 hereby expressly declared to be void."

26. 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. This position existed in Pre- RERA cases as 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.

27. The Authority observes that despite receipt of considerable amount of money against the booked plot back in 2006, the respondent-promoter has neither specified the project details to the complainant nor has allotted a specific plot number to the complainant and has also failed to

enter into a written agreement for sale with respect to the same with the complainant.

28. The abovementioned issue has already been dealt by the Haryana Real Estate Regulatory Authority, Panchkula in the case titled as ***Nishant Bansal VS M/s Parsvnath Developers Limited decided on 11.03.2020***, wherein the following has been observed:

15. *For the reasons recorded above, the complaints are allowed and the respondent is directed to allot and deliver the possession of booked plots to the complainants in the project Parsvnath City, Sonipat on payment of balance sale consideration recoverable from them. The respondent shall comply with these directions within 90 days from the date of uploading of this order. In case the respondent due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it from the open market at his own cost. The respondent however will be entitled to recover from the complainants the balance amount payable by them as per the rate agreed by the parties at the time of booking of plots.*

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

23. *"The submission of the learned counsel for the appellant that the directions given by the learned Authority in the impugned order that the appellant is liable to make available to the respondents/allottees plots of the size, as booked, by purchasing the same from the open market at its own costs are not feasible, is also without any substance because it is established on the record that the appellant had sold the plots which were meant for the respondents/allottees, at premium by ignoring the legitimate rights of the respondents/allottees for allotment of the plots and the appellant/promoter had earned premium by effecting the illegal sales. Once this fact has been established that the appellant/promoter by ignoring the legitimate and legal claim of the respondents/allottees, had sold the plots meant for them on premium to other persons, the learned Authority under Section 37 of the Act, is competent to issue directions as it may consider necessary.*

24. *Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondents/allottees in the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter, interest for every month of delay till the handing over of the*



possession, as such rate as may be prescribed. Accordingly, the respondents/allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.

25. *Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer."*
30. In view of the reasons stated above and judgement quoted above, the respondent is directed to allot a specific plot number and issue allotment and execute the buyer's agreement of the said plot allotted to him within a period of 90 days from the date of uploading of this order. In case, respondent/ promoter due to non-availability of plots is not able to allot and offer its possession to the complainant in any existing project, it will be liable to make available to him a plot of the size, as booked, specifying the future upcoming project wherein specific plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
31. Now, the issue which needs adjudication in this complaint is whether complainant is entitled to the relief of possession of plot booked by the complainant along with interest for delay in handing over the possession in absence of allotment letter and builder buyer agreement.
32. In the present complaint, the complainant intends to continue with the project and is 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 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.”

33. In the instant matter, even after lapse of more than 18 years from the date of payment till the filling of complaint, no allotment letter and buyer’s agreement has been executed inter- se parties. Even till date, the respondent has miserably failed to specify the project name as well as plot number where 300 sq. yards. has been allotted. Further, the respondent fails or surrender its claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.
34. That the authority is of the considered view that the Act, 2016 ensures the allottee’s right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
35. The Hon’ble Supreme Court in the case of **Fortune Infrastructure and Ors. Vs. Trevor D’Lima and Ors. (12.03.2018 - SC); MANU/SC/0253 /2018** observed that *“a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery***

period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

36. In view of the above-mentioned reasoning, the date of payment made vide receipt dated 04.09.2006, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 04.09.2009, manifesting that there has been a delay of more than 18 years in handing over possession, making the respondent liable to pay delay possession charges as per section 18 of the Act, 2016 along with possession.
37. **Payment of delay possession charges at prescribed rate of interest:**
The complainant is seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.
38. 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.
39. 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., 25.09.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

40. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
41. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to him in case of delay possession charges.
42. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. The possession of the subject plot was to be delivered by 04.09.2009. However, the respondent/promoter has not allotted a specific plot number to the complainant and also has failed to handover possession of the plot to the complainant till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to allot a specific unit number and hand over the physical possession. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the booked plot to the complainant. Further no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
43. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @11.10% p.a. w.e.f. 04.09.2009

till the date of offer of possession plus two months or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

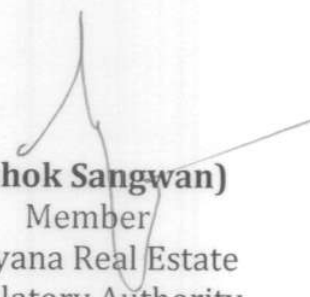
44. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to allot a specific plot number and issue allotment and execute the buyer's agreement of the said plot allotted to him within a period of 90 days from the date of uploading of this order. In case, respondent/ promoter due to non-availability of plots is not able to allot and offer its possession to the complainant in any existing project, it will be liable to make available to him a plot of the size, as booked, specifying the future upcoming project wherein specific plot number shall be provided in a specified time framed and execute buyer's agreement within a period of 30 days.
- ii. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 04.09.2009 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate/part completion certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from 04.09.2009 till the date of order by the authority shall be paid by the respondent/promoter

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 promoter 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 respondent is further, directed to handover the physical possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority.
 - vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
45. Complaint stands disposed of.
46. File be consigned to registry.

Dated: 25.09.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram