



HARERA
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HARYANA REAL ESTATE REGULATORY AUTHORITY
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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY		1
Day and Date	Friday and 26.11.2021	
Complaint No.	CR/664/2019 Case titled as Alta Vista Solutions Pvt Ltd V/S HSIIDC	
Complainant	Alta Vista Solutions Pvt Ltd	
Represented through	Shri Vikas Deep Advocate	
Respondent	HSIIDC	
Respondent Represented	Shri Rajesh Kumar Garg proxy counsel for Shri Vivek Verma Advocate	
Last date of hearing	27.10.2021	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings The present complaint has been received on 11.02.2019 and the reply on behalf of respondent was received on 06.03.2019. Succinct facts of the case as per the complaint and annexures are as under:		
S.N.	Particulars	Details
1.	Name and location of the project	Prestigious projects, for "Information Technology(IT)/ IT-enabled services", sector 35, Gurugram
2.	Nature of real estate project	Industrial plot
3.	Unit no.	Plot no. 51, sector 35, Gurugram admeasuring 3,305 sq. mtr. (annexure- C-5 on page no. 31 of the complaint)

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Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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4.	Revised unit no.	Plot no. 1, sector 34, Gurugram admeasuring 2676 sq. mtr. (annexure- C-28 on page no. 88 of the complaint)
5.	Total sale consideration	Rs. 4,01,40,000/- (annexure- C-29 on page no. 89 of the complaint)
6.	Amount paid by the complainants	Rs. 4,05,91,193/- (as alleged by the complaint on page no. 15 of the complaint and agreed to by the respondent)
7.	Payment plan	Instalment linked plan (annexure- C-7 on page no. 38 of the complaint)
8.	Date of allotment letter	09.09.2008 (annexure- C-5 on page no. 31 of the complaint)
9.	Regular letter of allotment (RLA)	07.11.2008 (annexure- C-7 on page no. 36 of the complaint)
10.	Date of execution of agreement and acceptance of RLA	10.12.2008 (annexure- R-5 on page no. 27 of the reply)
11.	Possession clause	N.A
12.	Due date of possession	Cannot be ascertained
13.	Offer of possession	Not offered

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It is a remanded case from the Hon'ble Appellate Tribunal for adjudication of the rights of the parties on merits.

The complainant allottee has preferred an appeal against the orders dated **18.12.2019** passed by this authority vide which it was held that this authority doesn't have jurisdiction to adjudicate the present matter as the allotment of the subject plot was done by the respondent in the year 2008. Further, the complainant was advised to approach the Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh.

Consequently, the Hon'ble Appellate Tribunal allowed the said appeal and set aside the impugned order dated 18.12.2019 passed by this authority. The operative part of the order of the Appellate Tribunal dated 14.10.2020 is as under:-

Para No.16 and 17:-

"The relevant provisions of the Act have come into force w.e.f. 01.05.2017. On that date, there was no motorable road in front of the plot of the appellant, there was no water supply system and the sewerage disposal network is not yet complete. The physical possession of the plot has not been offered to the appellant even today. So, we are of the considered opinion that the provisions of the Act have become applicable to the project in question and the learned authority was required to adjudicate the complaint filed by the appellant on merits. The view taken by the learned authority that it has no jurisdiction as the allotment was made in the year 2008, is totally erroneous as the respondents/promoter have yet to fulfill their obligations. Consequently, the impugned order cannot be sustained in the eyes of law.

Thus, keeping in view our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated 18.12.2019 passed by the learned Authority is hereby set aside. The case is remanded to the learned Authority for adjudication of the complaint filed by the appellant on merits".

The matter was remanded back by the Appellate Tribunal with the directions to both the parties to appear before the Authority on 02.11.2020. No addenda to the reply already filed by the respondent has been filed after remanding back of the matter from the Appellate Tribunal.



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The complainant has sought following reliefs:-

1. The respondent be directed to pay the delayed possession charges.

The counsel for the complainant has drawn the attention of the authority towards the Estate Management Procedure (EMP), 2015, Chapter-4, clause 4.1 which reads as under: -

"4.1 An offer of possession' means Corporation makes an offer of physical possession of the plot/ site to the allottee. The Corporation would offer the site(s) for physical possession after it has completed the basic infrastructure facilities comprising of (i) a motorable access road to the site, (ii) water supply system i.e. availability of water connection at site for construction & drinking purpose; (iii) Sewerage disposal Network; (iv) Electrical Infrastructure comprising of the Distribution system network for construction purpose; and (v) Provision of security service in the Estate, and made these facilities available at site in respect of the plots for which the possession is offered so as to enable the allottee to start construction of building for the project. It would be in order to offer the possession of plots in an estate in parts or in a phased manner. (The amendments in EMP with respect to basic infrastructure facilities to be provided before offer of possession shall be applicable for estates to be planned/developed in future i.e. after 08.03.2017)."

The respondent corporation in their reply had submitted that the work of motorable road in front of the subject plot was completed in June 2017, electrical infrastructure comprising of the distribution system network for the construction purpose was completed in June, 2014 and water supply system was completed in December, 2018. On bare perusal of the reply, it becomes evidently clear that the respondent promoter was not in a position to make an "offer of possession" till December, 2018 as the prerequisites to make an offer of possession were not completed.

As per clause 2(vii) of the RLA dated 07.11.2008, the physical possession of the subject plot shall be offered by the corporation upon completion of minimum required infrastructure facilities in the area.

Further more, as per the clause 4 of the agreement dated 10.12.2008, the allottee shall be required to implement the project, for which the aforesaid plot

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has been allotted, within a period of three years from the date of offer of possession; and that implementation of the project shall mean the commencement of commercial production, after coverage of construction in accordance with the norms specified in the EMP and installation of the plant and the machinery. The above-mentioned clause is also silent w.r.t the timeline of delivery of possession.

It is surprising that no timelines have been fixed by the respondent corporation regarding completion of development works. On one side, the Government agencies accuse private builders if such kind of uncertainty, arbitrariness is incorporated in BBAs whereas the estate management procedure of 2015, chapter IV, clause 4.1 is totally arbitrary and the respondent corporation is non-committal as far as date of completion of development works is concerned while issuing allotment letter. It is pertinent to take note of the fact that total sale consideration have been paid by the complainant as back as on 03.05.2011 and even after making full payment for 10 years, nothing has been done by the corporation to complete the development works. The corporation has to declare the date of completion of development works and due date of handing over of possession. In case no plausible due date of possession is given by the corporation then authority will be constrained to take a serious view in the matter and reasonable due date of possession shall be decided as it cannot be indefinitely postponed.

2. Direct the respondent to handover the possession and execute a title deed in respect of the subject plot.

The respondent corporation is directed to handover the possession of the subject plot after completing the basic infrastructure facilities as mentioned in the EMP- 2015. **The respondent-corporation is directed to indicate as what is their tentative date of completion of development works in this matter and what shall be the due date of possession.**

3. Direct the respondent to convert the subject unit under category of 'Regular Projects' from the category of the 'Prestigious Projects', without any fee/ penalty, in the interest of justice.

The exit route for the allottees of prestigious project category has specifically been mentioned in the 5.8 (b) (v) of the EMP- 2015. The complainant allottee may accordingly opt the above-mentioned exit route. If respondent



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corporation has any other view in the matter, the same may be filed before the next date of hearing.

4. The respondent be further directed to refund the interest of Rs.4,51,193/-, illegally imposed upon the complainant.

The respondent corporation is directed to submit their reply in this regard alongwith reply, if any, is to be filed by them after the decision of the Appellate Tribunal. Copy be supplied to the complainant.

Matter to come up on 08.02.2022 for further proceedings.

V.1-3
Vijay Kumar Goyal
Member

Dr. KK Khandelwal
Chairman
26.11.2021