HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**233 of 2020**
Date of filing:	**14.02.2020**
Date of first hearing:	**04.08.2020**
Date of decision:	**15.03.2023**

Baljeet,
S/o Sh. Sher Singh,
R/o House No. 66/1, VPO Mohna,
Tehsil Ballabgarh, Faridabad, Haryana

....COMPLAINANT(S)

VERSUS

BPTP Parkland Pride Limited
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

....RESPONDENTS(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
Nadim Akhtar **Member**

Present: - Mr. Akash Vashisth, Counsel for the complainant through VC.

Mr. Hemant Saini, Counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Initially present complaint dated 14.02.2020 has been filed by complainant under Section 31 of The Real Estate (Regulation &

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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.

2. Vide order dated 08.03.2022, the Adjudicating officer transferred the above said complaints to the Authority in view of observations of the Hon'ble Apex Court in CWP no. 6745-6749 of 2021 titled as Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others and observations of Punjab and Haryana High Court in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. versus Union of India and others regarding jurisdiction of Authority with respect to matters concerning possession and refund.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Parklands Pride, Sector-77 Faridabad.
2.	RERA registered/not registered	Not registered
3.	Unit no.	PB-111-FF
4.	Unit area	1050 square ft (Super Area)
5.	Date of allotment	13.02.2012
6.	Date of builder buyer agreement	26.12.2012
7.	Due date of offer of possession	26.12.2015
8.	Possession clause in BBA	Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being if default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions,formalities,documentations etc., as prescribed by the Seller Confirming Party, the Seller/Confirming Party period of proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a thirty (30)

		months from the date of execution of the Floor Buyers Agreement. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (30) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the building consisting of the three independent residential floors including the Floor. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers) wherein the Purchaser(s) will be granted 30 days period to complete the formalities and payment of amount demanded.
9.	Basic sale price	₹ 34,35,002/-
10.	Amount paid by complainant	₹ 15,30,559/-
11.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

4. Facts of complaint are that complainant in the year 2011 booked the floor in the real estate project named "Parklands Pride", Faridabad by paying Rs. 3,00,000/- on 05.05.2011 following which complainant was allotted unit no. PB-111-FF having area of 1050 sq. ft. at the rate 3271.43 [er square ft vide letter dated 13.02.2012.

5. Complainant entered into builder buyer agreement with the respondent on 26.12.2012. As per said agreement the complainant was supposed to pay the total sales consideration of Rs. 37,63,739.59/-. Against said consideration, complainant has paid an amount of Rs. 15,30,559/-.

6. That since the last demand letter i,e. in 2012, till date respondent has neither demanded any instalment nor have they handed over the possession to the complainant whereas as per clause 5 of builder buyer agreement the possession was to be handed over up to 26.12.2015.

7. Complainant had visited more than 10 times to the office of the respondent company but till date no positive response has been received. Further, it has been submitted that respondent has not acted in terms of the builder buyer agreement by not fulfilling the obligation to deliver possession within stipulated time. Therefore, complainant wants to withdraw from the project.

8. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

9. The complainant in his complaint has sought following reliefs:

(i) To refund an amount of Rs. 15,30,559/- paid by complainant to the respondent company towards cost of unit no. PB-111-FF in project named

Rattee

Parkland Pride Faridabad by M/s BPTP Parkland Pride Ltd., Faridabad along with interest @ 18% per annum as being charged from the complainant;

Alternatively

To direct the respondent company to hand over the possession of floor to complainant with the interest of 18% for delay in possession;

(ii) To direct the respondent to Pay Rs. 5,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment;

(iii)To direct the respondent to Pay Rs. 5,00,000/- as compensation to the complainant as part of deficiency of service on your part;

(iv) To direct the respondent to refund of all legal cost of Rs. 1,00,000/- (One Lakh Only) incurred by the complainant including cost related to this Complaint;

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 06.10.2020 pleading therein:

10. That builder buyer agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

11. Respondent has admitted allotment and execution of floor buyer agreement in favor of complainant. It has been stated that complainant

had delayed in payments and even stopped making payments as per the agreed payment schedule after 03.07.2012. Thereafter respondent had issued demand letter dated 07.11.2013 07.12.2013 and 06.01.2014 but complainant did not honor such demands. Respondent sent various reminders dated 25.11.2013, 30.12.2013, and 31.01.2014. Final opportunity letter was issued to complainant on 02.03.2014. Complainant's unit was finally terminated on 05.05.2014 on account of non-payment of demanded outstanding amount by the complainant. Said fact of termination has been concealed by the complainant in his complaint.

12. It has been stated that project has already received occupation certificate on 27.12.2019 however complainant has not been offered possession of his unit because his unit was terminated way back in May 2014. Complainant had filed a false and frivolous complaint after lapse of around 8 years.

13. Complainant is at default as per section 19(6) and 19(7) by not honoring the demand letters issued in accordance of builder buyer agreement.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest. Learned counsel for the

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respondent reiterated arguments as were submitted in written statement. He referred to order dated 31.05.2022 wherein complainant was asked as to why an amount of 10% be not deducted as earnest money when complainant has himself defaulted in making payments towards the demand letters raised by respondent in consonance with the payment schedule. To this ld. counsel for the complainant requested that present complaint be restricted to relief of refund amount along with interest after deducting earnest money of 10 %.

F. ISSUES FOR ADJUDICATION

15. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

16. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) This case was already heard at length vide hearing dated 31.05.2022 and detailed observations were given. Relevant part of the order is being reproduced below:

"Ld. counsel for respondent argued that complainant intentionally did not pay the demand raised vide letters dated 07.11.2013, 07.12.2013 and 06.01.2014, copies of which are annexed at page no. 92, 96 and 100 of written statement respectively. For these demands respondent had also issued reminder letters dated

25.11.2013, 30.12.2013 and 12.03.2014 but complainant chose not to honor these demands. Complainant was also sent final opportunity letter on 02.03.2014 but he did not pay the demands even after issuance of final opportunity letter. So, on account of non-payment despite repeated reminders his unit was terminated on 05.05.2014. He further argued that unit has been terminated due to default on the part of complainant and therefore respondent is well within his rights to deduct earnest money in terms of builder buyer agreement while refunding the amount paid by the complainant.

6. Rebutting argument of ld. counsel for complainant is that demand letters dated 07.11.2013, 07.12.2013 and 06.01.2014 were not in consonance with the construction linked payment plan opted by complainant. These demand letters are unjustified and therefore earnest money is not liable to be deducted from paid amount and complainant deserve to be granted refund of Rs. 15,30,559/- along with interest.

7. Admittedly complainants have paid an amount of Rs. 15,30,559/- and in support complainant has annexed receipts of Rs. 11,54,056/- as annexure C-5 to complaint and for amount of Rs. 3,59,590/- copy of cheque dated 28.07.2011 has been placed on record, and for remaining amount of 16,913/- complainant is relying upon statement of accounts dated 03.07.2012. No proof of remittance of cheque for Rs. 3,59,590/- to respondent has been placed on record. Therefore, for the amount of Rs. 3,76,503/- statement of accounts dated 03.07.2012 will be taken into consideration.

8. On perusal of Annexure C which is construction linked payment plan of builder buyer agreement opted by complainant, it is revealed that complainant had to deposit 10 % of basic sales price towards booking at the time of booking, next instalment

of 10 % of basic sales price within 90 days of booking, 10 % of basic sales price+ 20 % of DC+ 20 % of PLC within 150 days of booking. 10 % of basic sales price+ 20 % of DC+ 20 % of PLC at the start of construction. As per payments made by complainant it is found that last payment of Rs. 5,34,056/- of which cheque has been submitted was made on 03.07.2012. Said demand was paid in terms of demand letter dated 13.04.2012 and 23.05.2012 at the stage of start of construction as per payment schedule. Till that stage complainant as per his version had in total paid an amount of Rs. 15,30,558.55/- which is admitted in the statement of accounts dated 03.07.2012. After said last payment, complainant has not honoured any demand letter in the absence of justification for it and is today alleging that demand letters raised after 23.05.2012 are not in consonance with the payment plan opted by him. As per written statement of respondent he has raised demand of Rs. 4,07,028/- which is inclusive of previous unpaid dues of Rs. 32,324.93/- + 3,74,703.55/- (current demand) on 07.11.2013 at the stage of casting of ground floor roof slab. Next demand was raised for Rs. 7,81,732.03 which is inclusive of previous unpaid dues of Rs. 4,07,028/- + 3,74,703.55/- (current demand) on 07.12.2013 at the stage of casting of first floor roof slab. Next demand was raised for Rs. 11,56,435.58/- which is inclusive of previous unpaid dues of Rs. 7,81,732.03 + 3,74,703.55/- (current demand) on 06.01.2014 at the stage of casting of second floor roof slab. For payment of these demands' reminder letters dated 25.11.2013, 30.12.2013 and 12.03.2014 were issued to the complainant.

9. As per payment plan, the demand which could be raised after the demand at the start of construction was demand for casting of ground floor slab amounting to 10 % of basic sales price+ 20 % of Development charges + 20 % of PLC. On perusal of

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demand letter dated 07.11.2013 annexed at page 92 of reply it is found that respondent had rightly raised demand of Rs. 4,07,028/- which is inclusive of previous unpaid dues of Rs. 32,324.93/- + 3,74,703.55/- (current demand) for stage of casting of ground floor roof slab. Similarly demand letter dated 07.12.2013 in respect of casting of first floor roof slab and 06.01.2014 issued in respect of casting of second floor roof slab was in consonance with the payment schedule with current demand of Rs. 3,74,703.55/-. As such demands raised by the respondent were in consonance with the payment schedule in respect of amount and stage of construction. Complainant's argument in regard to unjustified demands therefore appears incorrect. Authority prima facie is of the view that earnest money to the tune of 10% of basic sales price has to be deducted and remaining amount should be refunded along with interest"

Ld. counsel for the complainant has not put forward any arguments in respect of tentative view expressed by the Authority to deduct the earnest money to the tune of 10% of basic sales price and remaining amount to be refunded alongwith interest. As such this tentative view of the Authority was unrebutted and unchallenged on behalf of the complainant.

(ii) One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondents have argued that relationship of

builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act. In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written , the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd decided on 16.07.2018. Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that*

situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

(iii) Factual position reveals that respondent has terminated the unit on 05.05.2014 on account of non-payment by complainant after issuing several reminders dated 25.11.2013, 30.12.2013 and 12.03.2014 and final opportunity letter dated 02.03.2014. It is not the case where complainant has denied the

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receipt of reminders and termination letter. The only obligation which was left on the part of the respondent was to return the amount paid by complainant in terms of builder buyer agreement but respondent has failed to discharge the said obligation and therefore the cause of action of complainant still survives.

(iv) The view taken by the Authority vide order dated 31.05.2022 is justified by decision in Appeal no. 292/2019 titled as Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain, wherein Hon'ble Appellate Tribunal has observed that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e. apartment/plot/building. Relevant part of the order is reproduced below for reference:-

"17. The legal position with regard to the earnest money has been dealt in detail by Hon'ble Supreme Court in citations Maula Bux v. Union of India (1969)(2) SCC 554, and Satish Batra's case (supra) and the same can be condensed as follows:- "Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault of failure of the vendee. Law is, therefore, clear that to justify the forfeiture of advance money being part of earnest money the terms of the contract should be clear and explicit. Earnest money is paid or given at

the time when the contract is entered into and, as a pledge for its due performance by the 13 Appeal No.292/2019 & 35/2021 depositor to be forfeited in case of non-performance, by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. In other words, earnest money is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser."

18. The perusal of Article 1 Clause 1(xiii) of the agreement dated 11.11.2014 shows that it has been specifically stipulated that earnest money would be 15% of the basic sale price which was meant to ensure performance, compliance and fulfillment of obligations and responsibilities of the buyer. Though, the allottees have taken the stand that the earnest money in the present case is Rs.11,00,000/- which was deposited by them at the time of booking of the plot, but the same cannot be attached any credence because the booking is only request for allotment and does not constitute a final allotment or agreement.

19. Now, the question to be determined is that whether the earnest money to the tune of 15% of the basic sale price, as stipulated in the Agreement of 11.11.2014 can be termed as reasonable or not? In citation Pioneer Urban Land and 14 Appeal No.292/2019 & 35/2021 Infrastructure Ltd.'s case (supra), the Hon'ble Supreme Court has laid down that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the

parties, who are not equal in bargaining power. A term of a contract will not be final and binding if it is shows that flat purchaser had no option but to sign on the dotted line, on a contract framed by a builder. Further, incorporation of one-sided clauses in an agreement constitutes an unfair trade practice since it adopts unfair methods or practices for the purpose of selling the flat by the builder.

20. In citation DLF Ltd.'s case (supra), the Hon'ble National Consumer Disputes Redressal Commission, while discussing the cases of Maula Bux's case (supra), Satish Batra's case (supra) and other cases as mentioned in para No.10 of the said order, has clearly laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Further, it was held that 20% of the sale 15 Appeal No.292/2019 & 35/2021 price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show it had suffered loss to the extent the amount was forfeited by it. In absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price, cannot be said to be a reasonable amount.

21. In his last desperate attempt, learned counsel for the promoter has submitted that since the allottees had specifically agreed to pay 15% of the sale price as earnest money, the forfeiture to the extent of 15% of the sale price cannot be said to be unreasonable as the same is in consonance with the terms

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agreed between the parties. He has also submitted that so long as the promoter was acting as per the terms and conditions agreed between the parties, it cannot be said to be deficient in rendering services to the allottees. This aforesaid submission as put forward by the learned counsel for the promoter, was also submitted before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in DLF's case (supra) and while dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would be contrary to the very concept of forfeiture of the 16 Appeal No.292/2019 & 35/2021 earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer, he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale consideration of the unit, out of the amount deposited by the allottees, is also inconformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e.apartment/plot /building."

17. In light of aforesaid observations already made in order dated 31.05.2022, Authority finds it to be fit case for allowing refund in favor of complainant after deducting earnest money to the tune of 10% of basic sale price. Though the complainant has sought that interest be allowed @18% however same cannot be allowed as interest can only be awarded in terms of RERA Act of 2016 and HRERA Rules of 2017. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

> **"Rule 15:** Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:
>
> Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by

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such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

18. The legislature in its wisdom in the subordinate legislation under the provisions 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.

19. 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. 15.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

20. 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;

21. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹15,30,559/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount after deducting earnest money to the tune of 10%. Basic sale price of the unit is Rs 34,35,002/- and 10% of it is Rs 3,43,500.2/-. Authority has got calculated the interest on total paid amount at the rate of 10.70% till the date of this order and said amount works out to ₹ 17,92,899/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 15.02.2023
1.	₹ 3,00,000/-	05.05.2011	3,81,067/-
2.	₹ 3,20,000/-	11.06.2012	3,68,666/-
3.	₹ 9,10,559/-	03.07.2012	10,43,166/-
4.	Total = 15,30,559		=17,92,899/-
5. Total amount of refund+ interest= 15,30,559+17,92,899= 33,23,458 6. Total amount- Earnest money= 33,23,458- 3,43,500.2= 29,69,957.8/- 7. Total amount to be refunded by respondent to complainant= 29,69,957.8/-			

22. The complainant is seeking compensation on account of mental agony, torture, harassment caused for delay in possession, deficiency in services and cost escalation. It is observed that Hon'ble Supreme Court of lndia in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

23. 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 refund the entire amount of ₹ 29,69,957.8/- to the complainant.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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

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NADIM AKHTAR
[MEMBER]

.....
Dr. GEETA RATHEE SINGH
[MEMBER]