HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2346 of 2022**
Date of filing:	**05.09.2022**
Date of first hearing:	**10.11.2022**
Date of decision:	**02.08.2023**

Chand Roop S/o Sh. Suresh
R/o Village Raipur,
Tehsil and District, Sonipat

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT(S)

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

Present: - Mr. Gaurav Gupta, Counsel for the complainant through VC.

Mr. Shubhnit Hans, Counsel for the respondent through VC.

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ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 10.11.2022 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 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	Espania Height, Main NH-1, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Registered vide HRERA-PKL-SNP-161-2019
4.	DTCP License no.	1065-1068 of 2006,
	Licensed Area	12.64 acres
5.	Unit no.	EH-06-1102
6.	Unit area	1075 sq. ft.
7.	Date of allotment	08.11.2012

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8.	Date of builder buyer agreement	24.11.2012
9.	Due date of offer of possession (30 months)	24.05.2015
10.	Possession clause in BBA (clause 30)	.....However, if the possession of the floor is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs.5 per square foot of the total super area of the floor. The purchaser agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the floor.
11.	Total sale consideration	25,22,665/-.
12.	Amount paid by complainant	₹13,25,051/-
13.	Offer of possession (fit-out)	No offer.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant had booked a floor in a project of the respondent, i.e., TDI Infrastructure Ltd by making payment of Rs 2,00,000/- on 29.09.2012, following which allotment letter dated 08.11.2012 was issued in favor of complainant and floor no. EH-06-1102 having area 1075 sq ft in project "Espania Heights", NH-1, Sonipat was allotted.

4. That builder buyer agreement was executed between the parties on 24.11.2012 and in terms of it, the possession was supposed to be delivered upto 24.05.2015. Complainant has paid an amount of Rs 13,25,051/- against total sale consideration of Rs 25,22,665/- upto 03.01.2014.

5. That the respondent after a lapse of more than 7 years has failed to deliver actual possession of the unit. It is further submitted by the complainant that Indian Bank has issued a "Notice for Indented Sale" dated 28.06.2022 to the respondent for the project "Espania" ,i.e, the project in concern, as the respondent has failed to repay an amount of ₹ 48,22,00,000/- of the Indian Bank and the bank is intending to sell off the entire project land of 12.64 acres including all the units build by way of auction. It is the apprehension of the complainant that due to the fact that project which was to developed having been declared non- performing asset by the Indian Bank so the complainant is never going to get the possession of the unit even in near future.

6. That respondent failed to honor its contractual obligations by not offering a valid offer of possession within the time stipulated in builder buyer agreement. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

7. Complainant in his complaint has sought following relief:

   i. The respondent may kindly be directed to refund an amount of Rs 13,25,051/- alongwith interest at the rate prescribed in Rule 15 of RERA Rules, 2017 to be calculate from the date of deposit till the date of actual realization to the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 24.01.2023 pleading therein:

8. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Espania Heights, NH-1, Sonipat, Haryana.

9. That the builder buyer agreement between the complainant and respondent has been executed on 24.11.2012 which is much prior from the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

10. That complainant herein as an investor has accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

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11. That respondent had vide letter dated 12.09.2016 applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. However, due to some unforeseen circumstances, the respondent had again applied for grant of Occupation Certificate on 17.02.2022.

12. That complainant has not approached this Authority with clean hands as material facts has been concealed by him. Vide letter dated 22.04.2016 respondent has already cancelled the allotment of unit for the reason that the complainant at its own free will stopped making payments to the respondent and did not bother to clear its pending dues despite numerous reminders/letters issued by respondent. Copy of reminders/letter is annexed as Annexure R-4. However, Respondent company as a goodwill gesture issued letter dated 20.01.2020 to the complainant offering possession for fit-out and requested the complainant to clear its pending dues.

13. That it is the complainant who did not come forward to take over the possession of the unit therefore the allotment was finally cancelled vide letter dated 29.10.2021 and 22.03.2022. Copies of said letter is annexed as Annexure R-7 and R-8.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. During oral arguments learned counsel for the complainant submitted that the demand letters referred by the respondent in its reply are not valid for the reason that after 2014 demands of payment/instalment were raised but said demands were not in consonance with the payment schedule, i.e., construction linked plan, no stage of construction was disclosed therein. Further, he objected to said letters stating that postal receipts are not attached with them. He requested for refund of total paid amount with interest.

16. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further stated that postal receipts have been filed in the registry on 01.08.2023 for reference. He further stated that complainant was silent about his rights since 2014, no payment has been made thereafter by him. Due to non-payment by complainant, despite issuance of several reminders, the respondent was constrained to cancel the allotment on 22.03.2022. Complainant has received all the letters annexed as annexure R/4 to R/7 and he has chosen not to reply to any of the letters. This complaint is an afterthought after RERA Act, 2016 coming into force as allotment of unit was cancelled way back in 2014. He requested to dismiss the complaint as complainant himself is a defaulter and no cause of action survives in his favor.

F. ISSUES FOR ADJUDICATION

17. 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. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

G.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

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, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the 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 Civil Appeal no. 6745-6749 of 2021** 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.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainants are entitled to delay interest at prescribed rate u/s 18(1) of RERA Act or for refund of paid amount till actual realization. Therefore, obligation raised by the respondent with regard to maintainability of the present complaint is rejected.

G.II Objections raised by the respondent stating that complainant herein is an investor and have invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains.

The complainant herein is the allotee/homebuyer who has made a substantial investment from his hard earned savings alongwith borrowing of money from bank under the belief that the

promoter/real estate developer will handover possession of the booked unit within 3-4 years of allotment but his bonafide belief stood shaken when the promoter failed to offer a valid possession of the booked unit till date without any reasonable cause. It is after an inordinate delay in handing over of possession that complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allotee of respondent-promoter. As per definition of allotee provided in clause 2(d) of RERA Act,2016, present complainant is duly covered under it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

"***Allotee**-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*".

Complainant has been allotted floor in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the builder buyer agreement dated 24.11.2012. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for

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consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

18. 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) Admittedly, complainant in this case had purchased the floor in the project of the respondent in the year 2012 against which an amount of Rs 13,25,051/- has been paid by the complainant. Out of said paid amount, last payment of Rs 1,70,051/- was made to respondent on 03.01.2014. Receipt of said amount is admitted by the respondent.

(ii) Allotment letter dated 08.11.2012 was issued in his favour and thereafter builder buyer agreement got executed between the complainant and respondent on 24.11.2012. In terms of clause 30 of it, the possession was supposed to be delivered by 24.05.2015. In present situation, complainant has not made any payment to the respondent after 03.01.2014 and stand of the respondent is that due to non-payment by complainant the allotment was cancelled on 22.03.2022. Cancellation letter is annexed as Annexure R-6 with reply. On

perusal of said cancellation letter, it is revealed that there is no mention of anything about the refund of amount, if any made to the complainant. As per version of complainant, the paid amount is still lying with the respondent.

(iii) Complainant seeks refund of the entire paid amount along with interest. Case of the respondent is that respondent has cancelled the allotment of the complainant on 22.03.2022 after giving numerous opportunities by way of issuing reminders to pay the demands raised by respondent and cancellation notice attached as Annexure R-4 to R-6 to reply. Complainant's version is that reminder letters/demand letters referred by the respondent have not been received by him. Perusal of record-Allotment letter dated 08.11.2012, annexed as Annexure C/1 of complaint bears the address village Raipur, Tehsil Sonipat. Builder buyer agreement dated 24.11.2012, annexed as Annexure C/2 of complaint also bears the Sonipat address. Further, complainant while filing his complaint has relied on a statement of account dated 29.09.2012 wherein respondent has acknowledged the receipt of amount of Rs. 13,25,051/-. Said statement of account bears same address of the complainant, i.e., Sonipat one. From the bare perusal of the demand letters and cancellation letter sent by the respondent to the complainant

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inference can clearly be drawn that Sonipat address of the complainant must have been communicated by the complainant only to the respondent. Respondent cannot know complainant's address without any communication to it by the complainant. Subsequent thereupon all communications were sent at the same address only. Further, particulars of Proforma-B and memo of parties of present complaint also affirms the same address. Complainant has neither pleaded nor placed on record anything which shows that his address got changed from Sonipat one. Last payment of Rs 1,70,051/- was made by complainant on 03.01.2014. Thereafter, perusal of demand letter dated 23.05.2014 annexed as annexure R-4 of the reply also shows that vide said letter respondent demanded a sum of Rs. 2,11,760.99/- from the complainant. Complainant has also not placed on record anything which shows that he objected to said demand or paid it which clearly shows that complainant chose to ignore the said letter. Following this various other letters ranging between the year 2014-2019 were issued to complainant by the respondent inclusive of cancellation letter dated 22.03.2022 but complainant had neither responded to any of the letter nor conveyed his intention to respondent of withdrawing from the project. Section 19(6) of the act talks

about the duties of the allottee. Same is reproduced as under for ready reference:

> *"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any"*

It was the duty of the complainant to make necessary payments but the complainant failed to fulfil his duty. Therefore the complainant cannot be allowed to take plea that he has not received said letters. Argument of the complainant that he has not received the letters sent to him by respondent stands rejected. Further, it is the argument of the ld. counsel of complainant that complainant has chosen not to honour demand letters annexed by respondent in his reply ranging from 2014-2019 as said letters did not reveal the stage of construction. In this regard, it is observed that the payment plan has been annexed with the builder buyer agreement as Annexure-II at page no. 37 of complaint. Proof of paid amount has been attached as statement of account dated 29.09.2012 at page no. 42 of complaint. Perusal of said statement clearly reveals the stage of construction for each instalment which had been paid by complainant from date of booking to the date of last payment i.e. 2012

to 2014. In the said statement of account, brief information about the upcoming instalments specifically pertaining to the stage of construction is also mentioned. Complainant himself has annexed said statement of account wherein he was duly updated about the stage of construction. But still after 03.01.2014, complainant chooses not to pay further instalments without assigning any reason to the respondent. It is not the case that complainant has enquired about the stage of construction in particular to respondent and respondent has refused to provide information. Complainant remained silent about his rights from year 2014 to filing of this complaint. Therefore, complainant cannot be allowed to take plea that his act of not honouring the demand letters of 2014-2019 was justified.

(iv) Moreover, complainant neither made any payment towards demand letters nor responded to said letters by any mode of communication and therefore after affording sufficient opportunity for payment the respondent cancelled the unit vide termination letter dated 22.03.2022. The complainant remained silent on this termination letter and filed present complaint for refund in the year 2022. The complainant cannot take advantage of his own wrong and negligence as he himself did not come forward to discharge his part of contract which is making of payment towards total sale consideration of the booked unit. Basic sales

consideration was Rs. 20,00,000/- as per clause 2 of builder buyer Agreement and the complainant has paid an amount of Rs. 13,25,051/-. Authority observes that respondent was justified in terminating the unit of the complainant as complainant failed to make payments. The only obligation which was left on the part of the respondent was to refund the amount paid by the complainant after deducting earnest money which has not been done till date therefore, cause of action still survives with the complainant. Builder buyer agreement executed between the parties provides for deduction of 15% of earnest money. In this regard, it is pertinent to refer to judgement dated 24.03.2023 passed in **Appeal no. 292/2019 titled as Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain** wherein Hon'ble Real Estate 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.*

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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 I 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

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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 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

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consideration amount of the Real Estate i.e.apartment/plot /building."

Accordingly, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. In this case agreement has been executed and basic sale price provided in said agreement is Rs 20,00,000/-. Earnest money of 10 % of the basic sales price is liable to be deducted from the amount paid by the complainant which works out to be Rs. 2,00,000/-.

19. In light of aforesaid observations, 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 in terms of RERA Act of 2016 and HRERA Rules of 2017.

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. 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. 02.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

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

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

23. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act,2016 and the complainant is entitled for refund of deposited amount alongwith interest. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the

amount. Authority directs respondent to refund to the complainant the paid amount along with interest after deduction of earnest money 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 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order and total amount works out to Rs 26,41,215/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.08.2023
1.	6,05,000	29.09.2012	705612
2.	5,50,000	06.11.2012	635310
3.	1,70,051	03.01.2014	175242
4.	Total=13,25,051/-		Total=15,16,164/-
5.	Total amount of refund + interest =13,25,051 +15,16,164 =28,41,215/-		
6.	Total amount-Earnest Money=28,41,215 - 2,00,000=26,41,215/-		
7.	Total amount to be refunded by respondent to complainant=26,41,215/-		

H. DIRECTIONS OF THE AUTHORITY

24. 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 ₹ 26,41,215/- 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.

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

.....
NADIM AKHTAR
MEMBER]

.....
DR. GEETA RATHEE SINGH
[MEMBER]