



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	50 of 2022
Date of filing:	02.02.2022
Date of first hearing:	29.03.2022
Date of decision:	18.05.2023

Mr. Pratap Shanker Malik

S/o Sh. Jiwan Das

R/o House No. 31 Avtar Enclave, Paschim Vihar,

West Delhi PIN- 110063

....COMPLAINANT

VERSUS

M/S Omaxe Limited through its Director & Managing Director

Registered Office Shop No. 19 B, First Floor,

Celebration Mall, Sohna Road,

Gurgaon, Haryana – 122001

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Hearing: 5th

Present: Mr. Sushil Malhotra, Id. counsel for complainants through VC.

Mr. Munish Gupta, Id. counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 02.02.2022 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	Shubhangan, Sector 4 A Kassar Road, Bahadurgarh, District Jhajjar, Haryana
2.	RERA registered/not registered	Registered
3.	RERA registered/not registered	Registered vide Registration no. HRERA-PKL-PNP-129-2019 valid till 30.06.2021



3.	Unit no.	Flat no. 602 RHBH/Tower 12A
4	Unit area	2215 sq.feet (Super area)
6.	Date of executing builder buyer agreement	27.11.2018
7.	Due date of possession	27.11.2021 (Reasonable time period of 3 years)
8.	Total sales consideration	₹55,41,050/-
9.	Amount paid by complainants	₹49,79,135/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that he booked a residential flat in the project of respondent, namely Shubhangan situated at Sector 4 A, Kassar Road, Bahadurgarh, District Jhajjar, Haryana on 10.06.218 by making payment of ₹ 5,50,000/-. Builder Buyer Agreement (hereinafter referred as BBA) was executed between the parties on 27.11.2018. Copy of the same is annexed as Annexure C-7 at page no. 18. A 4 BHK flat no. 602 in the building known as RHBH/TOWER 12A (3-4 Bhk) was allotted to the complainant. Sale price of the flat was decided as ₹ 55,41,050/- excluding GST in the clause 1.2 of



the Builder Buyer Agreement. Complainant claims to have made payment of ₹ 49,79,135/- to respondent from 10.06.2018 to 04.05.2019. Receipts of the same are annexed as Annexure C-2 to C-6 of the complaint file.

4. Builder Buyer Agreement did not provide a specific date or time frame for the delivery of possession to the complainant. Complainant sent an email to respondent enquiring regarding the date of handing over of possession. Respondent in reply sent an e-mail dated 22.01.2021 whereby he mentioned that the date of delivery of possession is 27.11.2020 of the booked flat.
5. Complainant is a retired government official who wished to purchase a residential flat for his own bona-fide residential use. Complainant used all his retirement benefits for the purchase of this flat. He has already paid ₹ 49,79,135/- which is 90% of the total sales consideration. Even after passing of a period of more than 3 years and 7 months from the date of booking, respondent has failed to offer possession of the unit. Construction of Project is stopped now. The respondent could not develop the project and is not in position to handover the physical possession of the unit. Aggrieved by the same, complainant has filed the present complaint with the prayer of refund of paid amount along with interest and compensation.

C. RELIEF SOUGHT

6. The complainant in his complaint has sought following reliefs.



- A. That this Hon'ble Authority may kindly be pleased to pass an order or direction to respondent to refund the amount of Rs. 49,79,135/- of unit to the complainant along with interest and compensation.
- B. Award the cost of this complaint which is Rs.35,000/- in favour of the complainant.
- C. It is prayed that the Authority may pass any order in favour of the Complainant in the interest of Justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 11.10.2022 pleading therein:

7. That complainant has tried to mislead this Hon'ble Authority. As per clause 5 of the agreement dated 27.11.2018, possession was agreed to be handed over, as per undertaking given to the Ld. Real Estate Regulatory Authority, at the time of registration of project. The date of completion of the project, as per declaration submitted by the respondent, was although 31.12.2021; however, on account of COVID-19 having been declared "force majeure condition" and in view of the real estate sector having hit badly due to COVID-19, six months relaxation was given to the developers, by the government, extending the said date by six months. Further, vide letter dated 14.07.2022, the Haryana Real Estate Regulatory Authority has extended the



date of completion of the project to 23.06.2023. Thus, the filing of the present complaint with misleading averments, is misuse and abuse of the process of law. Copy of Letter dated 14.07.2022 is annexed herewith as Annexure R-1.

8. Complaint in hand deserves to be dismissed, as no cause of action arose in favour of the complainant to file the present complaint. Prior to filing of the present complaint, offer of fit-out has already been issued to the complainant on 24.01.2022. However, despite the same, the complainant filed the present complaint. Therefore, the complaint, being not maintainable, deserves to be dismissed. Copy of offer of fit-out, dated 24.01.2022, alongwith postal proof, is attached as Annexure R-2.
9. Complaint filed by the complainant is liable to be dismissed, on account of concealment of relevant facts from this Hon'ble Authority. It is submitted that the complainant has not disclosed, in the entire complaint, that he chose Payment Schedule/Plan i.e. Flexi with Fixed Rent Scheme, as per which, upon payment of 40% amount, he was entitled for fixed rent for a period of 18 months. The complainant made payment of 40% amount by 08.10.2018 and accordingly, as per the said scheme, he was paid monthly fixed rent for a period of 18 months from 09.10.2018 till 08.04.2020, and in this manner, the assured rental of Rs. 4,30,802/- has already been paid to be complainant



(after deducting TDS). However, the complainant concealed this fact from this Hon'ble Authority.

10. It has also been submitted that vide the offer of fit out issued to the complainant on 24.01.2022, he was also informed that an amount of more than Rs. 5,00,000/- is due towards him. However, the complainant did not come forward for the purpose of making the balance payment so as to enable the respondent to do the needful for the purpose of handing over possession of unit to the complainant. Rather, in response to letter dated 24.01.2022, the complainant, vide his letter dated 24.02.2022 made a request for refund (Annexure R-3). Thus, it is apparent that in fact the complainant is defaulter, that too on various occasions, the complainant defaulted in making timely payment of installments. In this regard, some of the reminders sent to the complainant for making payment of installments, i.e. reminders dated 04.10.2018, 06.02.2019 and 03.05.2019 which are attached herewith alongwith their dispatch proof, as Annexure R-4 to R-6 for the kind perusal of the Authority.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

9. During oral arguments, ld. counsel for the complainant submitted that complainant joined the project of respondent on 10.06.2018. Builder Buyer



Agreement was executed on 27.11.2018. In the entire Builder Buyer Agreement, deemed date of delivery of possession is not mentioned. Complainant sent an email to respondent-promoter in regards to same whereby, respondent-promoter via email dated 22.01.2021 informed complainant that deemed date of delivery of possession is 27.11.2020. Furthermore, in the BBA clause 7.2 mentions that *"The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure and above mentioned conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee, the entire amount received by the Promoter from the allottee within ninety days. The promoter shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement."* As the project is far from completion and respondent has failed to deliver the possession, therefore, respondent was liable to refund the amount taken by him from complainant. He further submitted project has not received the occupation certificate and that it is now 2023, project is far from completion and there are still number of deficiencies in the project and



it is also inhabitable right now. Moreover, complainant is a 60 years old retired govt. official who wished to purchase a residential flat for his own bona-fide residential use. Complainant used all his retirement benefits for the purchase of this flat and wanted to move in it as soon as possible. Now his purpose has been defeated since 5 years have passed from the date of booking. Complainant has lost trust in the respondent promoter and he does not wish to stay with the project and seek refund of the money paid by him along with interest.

10. On the other hand, counsel for respondent submitted that according to clause 5 of the BBA, the time period inter se the parties ““5. *Time is essence: The Promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the said Unit for Residential/Commercial/any other usage (as the case may be) alongwith parking (if applicable) to the Allottee and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(1) of Rules, 2017.*” Except this agreed time period no other time period will be applicable. The time period submitted to the Authority is given in the registration certificate dated 20.09.2017 at page 12 (Annexure R 1) of reply. A perusal of same provides that this period has been extended to 30.06.2023.



Hence, this complaint is premature. The email counsel for complainant is referring, in that a tentative date of delivery was given, it cannot be taken as the agreed date of possession inter se the parties. In such a scenario, the time period mentioned in the Builder Buyer Agreement will prevail.

F. JURISDICTION OF THE AUTHORITY

11. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F.1 Territorial Jurisdiction

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be the entire Haryana except Gurugram District for all purposes with offices situated in Panchkula. In the present case the project in question is situated within the planning area Jhajjar district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

F.2 Subject Matter Jurisdiction

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)(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.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION

12. Whether the complainant is entitled to refund of the amount paid by him to respondent in terms of Section 18 along with interest in accordance with provision of Rule 15 of HRERA Rules, 2017 or not?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. After taking into consideration the facts and circumstances of the case and arguments put forth by the parties, it is considered that there are two issues at hand before the Authority in the present matter, firstly, what is the deemed



date of delivery of possession? Secondly, whether respondent has failed in discharging his obligation to deliver the possession of booked unit or not?

14. In regard to the first issue, Authority observes complainants booked a flat on 10.06.2018. Builder Buyer Agreement was executed on 27.11.2018. In order to ascertain the deemed date of possession, clauses of BBA needs to be perused. Relevant clauses of the BBA is reproduced below:

"5. Time is essence:

The Promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the said Unit for Residential/Commercial/any other usage (as the case may be) alongwith parking (if applicable) to the Allottee and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(1) of Rules, 2017.

6. CONSTRUCTION/ DEVELOPMENT OF THE PROJECT:

The Allottee has seen the proposed layout plan/ demarcation-cum-zoning/ site plan/ building plan, specifications, amenities, facilities, etc. depicted in the advertisement/ brochure/ agreement/ website (as the case may be) regarding the project(s) where the said Plot/ Unit/ Apartment for Residential/ Commercial/ any other usage (as the case may be) alongwith parking (if applicable) is located and has accepted the floor/ site plan, payment plan and the specifications, amenities, facilities, etc. [annexed along with this Agreement] which has been approved by the competent authority, as represented by the Promoter.

The Promoter shall develop the Project in accordance with the bye-laws such as Haryana Building Code, 2017, FAR, density norms, provisions prescribed, approved plans, terms and condition of the license/allotment as well as registration of RERA, etc. Subject to the terms in this Agreement, the Promoter undertakes to strictly abide by such plans approved by the competent Authorities and shall also strictly abide by the



provisions and norms prescribed by the concerned laws applicable in the state of Haryana and shall not have an option to make any variation/ alteration/ modification in such plans, other than in the manner provided under the Act and Rules made thereunder or as per approvals/instructions/ guidelines of the competent authorities, and any breach of this term by the Promoter shall constitute a material breach of the Agreement.

7. POSSESSION OF THE SAID UNIT FOR RESIDENTIAL/COMMERCIAL/ANY OTHER USAGE (AS THE CASE MAY BE)

7.1 Schedule for possession of the Plot/ Unit/ Apartment for Residential/Commercial/any other usage- The Promoter agrees and understands timely delivery of possession of the Plot/ Unit/ Apartment for Residential/ Commercial/ any other usage (as the case may be) alongwith parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(i) of Rules, 2017, is the essence of the Agreement.

The Promoter assures to hand over possession of the Plot/ Unit/ Apartment for Residential/ Commercial/ any other usage (as the case may be) alongwith parking (if applicable) as per agreed terms and conditions unless there is delay due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Plot/ Unit/ Apartment for Residential/ Commercial/ any other usage (as the case may be).

The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure and above mentioned conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee, the entire amount received by the Promoter from the allottee within ninety days The promoter shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/ she shall not have any rights, claims etc.

against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement..

In case the Allottee opts for Subvention Scheme wherein the Promoter agrees to pay the pre-emi till possession of the said Unit, then the Allottee confirms that he/she/it shall not be entitled for any compensation on account of delay in possession of the said Unit.

7.2 (A) Procedure for taking possession of Plot/ Unit/ Apartment - The Promoter, upon obtaining the approved demarcation-cum-zoning plan/ provision of services by the colonizer/ promoter, duly certifying/ part completion certificate, as the case may be, in respect of plotted colony shall offer in writing the possession.of.the plot within

three months from the date of above, to the Allottee(s) as per-terms of this Agreement.

The Promoter agrees and undertakes to indemnify the Allottee(s) in case of failure of fulfillment of any of the provisions, formalities, documentation on part of the Promoter. The promoter shall provide a copy (on demand) of approved demarcation-cum-zoning plan/ provision of services by the colonizer/ part completion certificate in respect of plotted development [Residential/Commercial/ Industrial/ IT Colony/ any other usage (as the case may be) alongwith parking (if applicable)] at the time of conveyance of the same. The Allottee(s), after taking possession, agree(s) to pay the maintenance charges and holding charges as determined by the Promoter/ association of allottees/ competent authority, as the case may be.

(B) Procedure for taking possession of built-up Unit/ Apartment The Promoter, upon obtaining the occupation certificate or part thereof of building blocks in respect of Group Housing/ Commercial/IT Colony/ Industrial/ any other usage (as he case may be) alongwith parking (if applicable) shall offer in writing the possession -f the unit/ apartment within three months from the date of above approval, to the allottee(s) as per terms of this Agreement.

The Promoter agrees and undertakes to indemnity the Alatten in case of failure of fulfillment of any of the provisions, formalities,



documentation on part of the Promoter The promoter shall provide copy (on demand) of occupation certificate or part thereof in respect of Group Housing/ Commercial/ IT Colony/ Industrial/ any other usage (as the case may be) alongwith parking (if applicable) at the time of conveyance of the same The Allottee(s), after taking possession, agrees to pay the maintenance charges and holding charges as determined by the Promoter/ association of allottees/ competent authority, as the case may be.

7.3 Failure of Allotted to take Possession of Plot/ Unit/ Apartment for Residential/Commercial/any other usage- Upon receiving a written intimation from the Promoter as per para 7.2, the Allottee shall take possession of the Plot/ Unit/ Apartment for Residential Commercial/ any other usage from the Promoter by executing necessary indemnities, undertakings and such other documentation as prescribed in this Agreement, and the Promoter shall give possession of the Plot/ Unit/ Apartment for Residential/ Commercial/ any other usage to the allottee as per terms and condition of the agreement.

In case the Allottee fails to comply with the essential documentation, undertaking, etc. or fails to take possession within the time provided in para 7.2, such Allottee shall continue to be liable to pay maintenance charges and holding charges as specified in para 7.2.

7.4 Possession by the Allottee - After obtaining the occupancy certificate of the building blocks in respect of Group Housing colony/ Commercial colony/ IT Colony or approved Zoning-cum- Demarcation Plan/provision of the services by the colonizer/ promoter, duly certifying/ part completion, in respect of a plotted colony, as the case may be and handing over the physical possession of the Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT/ any other usage alongwith parking (if applicable) to the Allottee(s), it shall be the responsibility of the Promoter to hand over the necessary documents and plans, and common areas to the association of allottees or the competent authority, as the case may be as provided under Rule 2(1)(i) of Rules, 2017."



15. A perusal of the above mentioned clauses reveals that there is no specified period or even the formula mentioned in the BBA to calculate the due date of delivery of possession. Clauses with respect to the handing over possession are vague and completely opaque. Respondent has left the issue of due date of possession open-ended. Generally, in cases that come before the Authority, period or date of possession is specified in terms of months or years which has not been provided in this case. Plea of respondent that date of completion of project as provided in the registration certificate be taken as due date of possession, is not acceptable for the reason that complainant was not made aware of such registration by the respondent nor the said fact of registration and date of completion of project was made part of the BBA. As a matter of fact, Builder Buyer Agreement was executed after the registration of project. Respondent should have disclosed his intention by clearly expressing the time period of completion in terms of registration in the Builder Buyer Agreement itself or should have opted for an addendum to BBA for clearly disclosing the terms of handing over of possession within a particular period. Therefore, opaque provisions of BBA are rejected and a reasonable time period to be taken for ascertaining due date of possession.
16. Since, deemed date of possession is not mentioned in the BBA. It cannot rightly be ascertained as to when the possession of said unit was due to be



given to the complainant. In Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession.

17. In the present complaint, the unit was booked in 2018 by the complainant and BBA was executed on 27.11.2018. Taking a period of 3 years from the date of BBA i.e., 27.11.2018 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 27.11.2021. Cause of action arose to complainant on 27.11.2021 when respondent failed to complete the project and deliver the possession of booked unit to complainant. Complainant has filed the present complaint before the Authority on 02.02.2022, after cause of action arose to him. Therefore, a present complaint is not premature, the Authority is very much in its power to pass appropriate orders.
18. Respondent in his reply has also taken a plea that complaint is not maintainable as respondent has already issued an offer of fit-out, dated 24.01.2022 to complainant. Perusal of offer of fit out (Annexure R 2 of reply) reveals that unit of complainant was on verge of completion and

awaiting necessary approval from the competent authorities. It was not accompanied with occupation certificate. It is also an admitted fact that project has not received occupation certificate. In such circumstances Authority observes that where an offer of fit out is not accompanied with an occupation certificate, same cannot be treated as a valid offer of possession. Therefore, contention of the respondent is rejected.

19. With respect to the second issue, it is observed that complainant paid a huge amount of ₹ 49,79,135/- within period of 9 months which shows that he contracted for purchase of ready to move apartment. Legitimate expectation of complainant therefore, was that an offer of possession will be made by the due date or within reasonable time there-after. However, the project of respondent has not received an occupation certificate. During the hearing also, nothing has been stated with respect to the stage of construction of project. Complainant does not wish to wait any further, he is pressing for the refund of the money paid by him to respondent along with interest. There is a delay of more than 1 years on the part of respondent in offering the possession of the unit. Respondent has not even specified as to when respondent will be in a position to hand over possession of booked apartment. Hence, delay of more than 1 years and not providing specific date of handing over of possession in such situations would justify prayer for



refund of money paid because the basic purpose of booking an apartment stands defeated by such delay. Authority cannot force complainant to endlessly wait for respondent to complete the project and deliver possession. He is well within his rights to seek refund of the money paid by him by the virtue of Section 18 of the RERA Act, 2016. Thus, the Authority considers it a fit case for grant of refund along with interest at the prescribed rate.

20. Further, in the judgment of the Hon'ble Supreme Court of India in the case of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" reiterated in case of "M/s Sana Realtors Pvt. Ltd. And Others. v. Union of India and Others." SLP(Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including



compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

"2(z) "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;"

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 (NCLR) 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”.

21. 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. 18.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount.

22. Respondent in his reply has raised a plea that complainant chose Payment Schedule/Plan I.e. Flexi with Fixed Rent Scheme, as per which, upon payment of 40% amount, he was entitled for fixed rent for a period of 18 months. Respondent has submitted that he had assured rental of Rs. 4,30,802/- (after deducting TDS) for 18 months from 09.10.2018 till 08.04.2020. Respondent has nowhere annexed any document to corroborate his plea. He has neither attached any receipt of payment of Rs. 4,30,802/- nor the perusal of payment plan shows the same. Also, BBA does not specify any clause regarding the fixed rent scheme, therefore, this plea of respondent is rejected.



23. Authority has got calculated the interest payable to the complainant till date of order i.e., 18.05.2023. Complainant has paid a total sum of ₹ 49,79,134/- to respondent till May 2019. Respondent shall refund this amount of ₹ 49,79,134/- along with interest as per Rule 15 of HRERA Rules, 2017.

Details of interest calculation is given in the table below:

Sr. No.	Principal Amount	From Date	Interest Amount till 18.05.2023
1.	4,91,073	2018-08-10	2,50,919
2.	58,926	2018-08-10	30,109
3.	16,41,315	2018-10-08	8,10,261
4.	16,38,900	2019-02-08	7,49,974
5.	11,48,920	2019-05-08	4,95,779
	Total principal amount = ₹ 49,79,134		Total upfront interest = ₹ 23,37,042

23. Interest is calculated on the amount of ₹ 49,79,134/- from the date of receipts till the date of the order i.e., 18.05.2023 @ SBI MCLR + 2% i.e., 10.70%

which comes out to be ₹ 23,37,042/-. Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to ₹ 73,16,176/-

24. With respect to other reliefs at serial no (B) and (C) sought by complainant in his complaint, it is observed that the relief sought are not part of the pleadings neither were argued by ld. counsel for complainant at the time of hearing.

I. DIRECTIONS OF THE AUTHORITY

25. 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 ₹ 73,16,176/- 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.



26. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading the order on the website of the Authority.

Geeta

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

Nadim

.....
NADIM AKHTAR
[MEMBER]

