HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**694 of 2018**
Date of filing:	**18.10.2018**
Date of first hearing:	**04.12.2018**
Date of decision:	**26.04.2023**

Satbir Singh Malik,
S/o Sh. Dharam Singh,
C/o Malik Hospital, Chand Colony,
Tehsil Samalkha, District Panipat
Haryana

....COMPLAINANT(S)

VERSUS

1. M/s Saraf Project Pvt. Ltd.
   Regd Office: A-89, New Friends Colony,
   NewDelhi
2. Saraf Mall near Nathu Sweets Narula Hotel,
   G. T. Road, Panipat
3. Naveen Bansal, S/o Jaswant Rai,
   R/o House no. 109, Devi Murti Colony,
   District Panipat,
   Haryana

4. Ashwani Bansal, S/o Jaswant Rai,
   R/o House no. 109, Devi Murti Colony,
   District Panipat,
   Haryana ....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Hearing: 17th

Present: Mr. Satbir Singh Malik, complainant in person.

Mr. Nidhish Gupta, ld. counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 18.10.2018 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 complainants, 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	Saraf Mall, Panipat
2.	RERA registered/not registered	Un-registered
3.	Unit no.	Shop no. FF-27 changed to FF-128
4	Unit area	375 sq. Ft. increased to 410.16 sq. ft.
6.	Date of executing builder buyer agreement	13.04.2007
7.	Due date of possession	Not mentioned
8.	Total sales consideration	₹8,92,500/-
9.	Amount paid by complainants	26,01,250/- (As per receipts filed by complainant)
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that he applied for booking of a commercial unit in the project namely "Saraf Mall" floated by respondent in Panipat, Haryana. Before execution of Builder Buyer Agreement hereinafter referred

as BBA, complainant paid a total amount of Rs. 24,51,250/- by 13.04.2007 at the time of initial booking. Copies of receipts are annexed herewith as Annexure P-1 (Colly). BBA was executed on 13.04.2007.

2. Complainant was allotted a Shop No F-27 in the Commercial project in Panipat named as "Saraf Mall located on 1 Floor measuring 375 sq ft. Approximately (Super Area) and 243.75 sq. ft. (Covered Area) as shown in the floor plan. The agreement to sell executed by respondent on 13 April, 2007. It was also assured by the respondent that complainant would get monthly assured return on the amount paid by the complainant vide above mentioned receipts. Therefore, the commitment period must be reckoned from the date of execution of agreement to sell dated 13.04 2007 Thus, commitment would start from 13.04.2007. A true copy of the agreement to sell dated 13.04.2007 and Floor Plan is annexed herewith as Annexure P-2.

3. That in the agreement to sell dated 13.04.2007, executed by promoter, it is mentioned that total sale consideration is Rs.8,92,500 but the promoter charged Rs.23,51,250/- against the agreement to sell of unit no. FF-27. The promoter respondent agreed to execute and register the sale deed of the property in favour of complainant on completion of the project and after providing complete infrastructure, i.e., water, electricity, lift facility, generator facility and all other basic amenities to be provided in the mall.

The promoter has also promised to pay interest on the total amount paid by the complainant in the form of monthly assured return.

4. Complainant received a letter dated 7th July 2008, whereby the unit allotted to the petitioner changed from FF-27, to FF-128. Apart from this, the super area was increased from 375 sq. ft. to 410.16 sq. ft. and was also increased covered area from 243.75 sq. ft. to 264.62 sq. ft. that too without consent of the complainant. The respondent also raised demand of further payment for balance increased area. The complainant paid an amount of Rs 1,00,000/- vide Cheque No 824601 dated 19.07.2008 which has been acknowledged by the respondent promoter vide letter dated 19 July, 2008 Copies of letter dated 07.07.2008 and 19.07.2008 are appended as Annexure P-3 (Colly).

5. Respondent-promoter paid the monthly assured return to the complainant from 13 April 2007 to December 2008 and this fact can be substantiated on the basis of the letters issued by respondent, in which the details of cheques issued on account of monthly assured returns for respective months have been given and Form 16-A of Income Tax pertaining to complainant. Copies of the letters having details of assured returns and Form - 16 are annexed as Annexure P-4 (Colly)

6. Respondent-promoter issued a letter dated 08.12.2008, whereby, the complainant was called to take the possession of the shop and it was also

mentioned that from the month of January, 2009 monthly assured return would not be paid to the complainant. The promoter has paid interest/monthly assured returns to the complainant upto 30.12.2008. In this letter promoter also assured that construction of mall would be completed within 2 months. Afterwards respondent promoter issued letter dated 23.01.2009 wherein, this is mentioned that complainant has to take immediate delivery of possession of the shop in question. Copies of the letters dated 8.12.2008 and 23.01.2009 are annexed as Annexure P-5 and P-6, respectively.

7. After getting the letters dated 08.12.2008 and 23.01.2009, complainant-complainant visited the site and found that shop No.FF-128 on the first floor and other adjoining units were not complete in all respects. The complainant also found that entire infrastructure of the mall was not complete and, the same was not found in a condition to be handed over to the allottee.

8. Furthermore, construction work in the above said project was stopped and it is still not started. Whenever the complainant approached respondent to enquire about the starting of construction activity, respondent has not given any satisfactory response. Due to non-completion of work on the site in time, possession of the shop could not be handed over to the complainant within stipulated time which caused financial loss, mental pain and agony as

well as harassment to the complainant. The complainant-petitioner booked above said commercial shop on the assurance of possession to be given within the stipulated period.

9. That the promoter assured the complainant to pay assured return on the total amount paid by the complainant till the completion of the project and handing over the possession of the shop. Despite that the respondent-promoter is not adhering its promise of payment of monthly assured returns that too in the present case where the respondent-promoter has charged Rs 14,35,000/- over and above Rs.8,92.500/- mentioned in the agreement to sell on the assurance of the respondent promoter that monthly assured return would be paid to the complainant on the total amount paid till the possession of the shop. Aggrieved by the same, complainant has filed the present complaint with the prayer of refund of amount paid along with interest as per rule - 15 of the HRERA Rules, 2017.

C. RELIEF SOUGHT

10. The complainant has sought following reliefs:

A. In the event that the registration has been granted to the Respondent Promoter for the project namely "Saraf Mall" in Panipat, Haryana under RERA read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA

B. In exercise of powers under section 35, direct the Respondent-Promoter to place on record all statutory approvals and sanctions of the project

C. In exercise of powers under section 35 of RERA and Rule 21 of HRE(R&D) RULES, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any.

D. To compensate the complainant for the delay in completion of the project and refund the entire amount of Rs. 24,51,250/- along with interest @ 18% compound interest from dates of respective instalments/realization of the sale consideration by the Respondent.

E. To pay compensation of Rs.5,00,000/- on account of harassment, mental agony and undue hardship caused to the Complainant-Petitioner on account of deficiency in service and unfair trade practices;

F. The complaint may be allowed with costs and litigation expenses of Rs.50,000/- Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1 and 2

Learned counsel for the respondent filed detailed reply pleading therein:

11. As a preliminary issue, respondent submitted that as per the Agreement to Sell dated 13.04.2007, which was executed between the respondent and the

Complainant, Shri Naveen Bansal and Shri Ashwani Bansal being the owners of the project were referred to as Seller No. 2 and were jointly liable with the respondent to complete the project. A separate agreement dated 29.03.2005, was also executed between the Respondent and Shri Naveen Bansal and Shri Ashwani Bansal wherein it was specifically mentioned that Shri Naveen Bansal and Shri Ashwani shall bear the entire cost and expenses for obtaining all the requisites licenses, permissions, sanctions and approvals from the concerned authorities for the construction and development of the project. Therefore, the present complaint filed by the complainant against the respondent needs to be dismissed against the Respondent for not impleading Shri Naveen Bansal and Shri Ashwani Bansal, who are persons solely and exclusively responsible for the delay of the project and in pursuant to the per section 2 (zk) of the Real Estate R&D) Act, 2016 clearly falls within the definition of "Promoter". A copy of the Agreement dated 29.03.2005, supplementary Agreement dated 06.08.2005 and second supplementary agreement dated 14.02.2007 are annexed as Annexure A-2, A-3 and A-4 respectively.

12. Owners of the property, i.e., Shri Naveen Bansal and Shri Ashwani Bansal did not let the Respondent to run Saraf Mall completely as they never

obtained the requisite permissions and sanctions which they were legally obliged to do so.

13. With respect to the allegation of complainant, respondent submitted that contents of the list of dates and events dated 13.04.2007, are specifically denied to the extent that the respondent had charged Rs. 23,51,250/- from the complainant against the agreement to sell dated 13.04.2007. It is beyond common understanding that when the property was valued at Rs. 8,92,500/, then what made the complainant to pay triple the amount of the sale consideration. The fact of the matter, however is that the respondent did not issue any alleged receipt towards any alleged cash or cheque payment. The complainant seems to have adopted unfair tactic to rope the respondent by fabricating documents to suits its case and convenience. Rest of the contents of the said para, being a matter of record requires no reply.

14. Vide the agreement to sell dated 13.04.2007, it was mutually agreed between the complainant and respondent that the complainant shall pay a total sum of Rs. 8,92,500/- for purchasing the shop in a project introduced by the respondent and the payment of Rs. 7,68,750/- through cheque was also acknowledged by respondent in the said agreement. Further, it was also explicitly mentioned in the agreement to sell dated 13.04.2007, that the

complainant shall make payment through cheque or demand draft and there was nothing mentioned about the mode of payment through cash.

15. It is also pertinent to mention that the complainant in his complaint alleged that on 11.04.2007 and 12.04.2007, he had made a payment of Rs. 5,80,000/- and 3,50,000/- respectively through cash to the respondent. The same has not been reflected in the payment column of the Agreement to Sell dated 13.04.2007, which specifically shows the payment of Rs. 6,18,750/- and 1,50,000/- made on 13.04.2007 vide cheques. Therefore, the allegation of the complainant that apart from paying a total sum of Rs. 7,68,750/-, he had also made a payment of Rs. 11,80,000/- to the respondent in cash towards the possession of the shop is frivolous and deliberate attempt to bring the complaint with in the ambit of this Hon'ble Authority by producing a forged and fabricated documents. Respondent had not charged a total sum of Rs. 23,51,250/- from the complainant against the total sale consideration of Rs. 8,92,500/- as provided in the Agreement to sell dated 13.04.2007 and rest of the contents are also denied.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 3 and 4

16. Respondent no. 3 and 4 submitted that they are owner in possession of land measuring 3 biga (5406 Sq.yard) bearing Municipal no.40/806, Plot no.14-15-16 Mustkil no.772, Killa no.2/1(1- 0), 2/2 (1-0), and 2/3 (1-0),

adjoining to Nurala hotel situated in Distt. Panipat. Respondent no. 3 and4 entered into a collaboration agreement on 29.03.2005 with respondent no.1 and 2. The collaboration agreement is attached with this reply as annexure-1. The building was completed in 36 months and ratio of distribution is was 30% for answering respondents and 70% for builder, subject to completion of the project and factum of obtaining sanction and handling over possession duly recorded in supplement agreement dt. 06.08.2005. The building was to be completed in all respect on before of 06.08.2008. The answering respondents requested many time to respondent no.1 to complete the project and also requested to respondent no.1 not sell the property without the consent of answering respondents. Respondent no.1 did not abide by the conditions of the agreement. Thereafter the second supplementary agreement was executed on 14.02.2007, where some area was demarcated to the respective share and some area was common for common use, this all was subject to completion to all respect.

17. Respondent no.1 failed to complete the project and answering respondents suffered heavy losses by conduct of respondent no.1. It is worthwhile to mention here that there was no lapse of any condition on fault of answering respondents. Thereafter, respondent no.1 and 2 filed a petition no. ARB-100/2008 before Hon'ble High court Punjab and Haryana for the

appointment of arbitrator and Hon'ble High Court appointed Hon'ble Mr. Justice R.C. Lohati former Chief Justice of India as sole arbitrator. Thereafter, Hon'ble Justice S.C. Aggarwal former judge of Supreme Court of India as sole arbitrator and ultimately Hon'ble Justice Mukul Mudgil former Chief Justice of Punjab and Haryana High Court was appointed as arbitrator. On 11.01.2012 the arbitrator terminated the arbitration proceeding on account of failure to prove the case. Accordingly their claim to sale their share was rejected and they have not challenged the proceedings. The answering respondents served a legal notice through his counsel on 22.09.2012 in which M.O.U. the rights of the respondent no.1 and 2 were terminated on account of failure of respondent no.1 and 2 in all respect. Thereafter, respondent no.1 and 2 again filed petition no. 234/2018 for appointment of arbitrator which is pending before the Hon'ble Punjab and Haryana High Court and a petition u/s 9 of Arbitration and Conciliation Act against the answering respondents in the court of Hon'ble Distt. Session Judge, Panipat and same was fixed in 11.07.2019. Copies of termination of arbitration proceeding dated 11.01.2012, notice dated 22.02.2012 and petition no. 234/2018 are annexed with the written submission as Annexure 2 to 4 and supplementary agreement Annexure 5 and 6.

18. Answering respondents are owners of the land and respondent no.1 and 2 are the builder and entered in agreement with complainant. Payments have been received by respondent no.1 and 2 from allottees and the answering respondents are nowhere responsible for the act or omission of respondent no.1. The answering respondents are suffering by the conduct of respondent no.1 and 2. It is very much clear in M.O.U. and supplement agreement that responsibility of answering respondent stands no bears. Complainant has executed an agreement with respondent no.1 and the answering respondents have no information regarding details sought by the Authority. However, the claim of the complainant is time barred. The answering respondents have not received any money from the complainant or from any buyer.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

19. During the hearing, complainant submitted that this case was heard at length on 23.10.2019 wherein Authority expressed its tentative view that it is a fit case for allowing refund. To resolve the issue regarding the payments made by complainant, Authority further directed respondent to produce the original receipt and ledger books of the year 2007 and to file his response to the question as to why he on receiving just a sum of Rs. 7,68,750/- had issued receipts and acknowledgement for an amount of Rs. 23,51,250/-. He

was also directed to produce documents revealing present status of the license, the project and the unit allotted to the complainant. However, thereafter, neither respondent submitted original receipts, ledger book in compliance of the order of Authority, nor filed any document revealing the present status of the project.

20. Complainant orally submitted that respondent, Mr. Neeraj Saraf, is an NRI and he is making illegal endeavors to sell the unit of the complainant and other allottees and will leave India thereafter. He further submitted that to clarify the issue regarding the payments made by him, he has again submitted details and receipts of payment vide application dated 22.08.2019. He prayed that he has lost all the trust in respondent-promoter and does not wish to stay with the project. He is seeking refund of the amount paid by him along with interest as per Rule 15 of HRERA Rules, 2017.

21. Mr. Nidhish Gupta, ld. counsel for respondent submitted that respondent-promoter is making effort to settle the case with complainant. He has also filed an application dated 25.04.2023 in reference to the same in the Authority. He requested for an opportunity to settle the matter with the complainant. Complainant did not agree to the same, he pressed that he may be granted a refund of the paid amount.

G. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

23. During the course of hearing on 13.07.2022, issue was raised that whether the present complaint is maintainable as project land has received license is not proved on record. Both parties were given opportunity to provide documents in support of their respective claim. Respondent 1, 2, 3 and 4 did not submit any document pertaining to license of project land. However, on the perusal of the Agreement annexed as R 2 with reply of respondent 3 and 4, it is found that plans and requisite approvals are to be duly sanctioned from Haryana Urban Development Authority and as such the present complaint is maintainable.

24. Further, on the hearing dated Captioned complaint was heard at length by the Authority on 23.10.2019 whereby Authority expressed its tentative view that case is fit for grant of refund. Only issue remaining to be adjudicated was relating to total amount paid by complainant. Relevant part of the order dated 23.10.2019 is reproduced below:

> *"1. The complainant herein is seeking refund of the amount of Rs. 23,51,250/- which he had already paid to the respondent for purchase of a shop in his project*

named "Saraf Mall". He is praying for refund on the ground that the respondent has failed to deliver him possession on the promised date.

2. The respondent on the other hand has averted that the complainant had only paid a sum of Rs. 7,68,750/- and the complainant is not entitled to refund because he had already offered him possession twice, once in the year 2008 and second time in the year 2009.

3. After hearing the parties and on perusal of record, the Authority finds that the respondent has not got registered his project, which falls in the category of an "ongoing project" because he has not yet discharged his obligations towards the complainant and other allottees. The respondent has nowhere pleaded that he had obtained the occupation certificate. So, the alleged offers of the years 2008 and 2009 cannot be considered valid offers.

Aforesaid conclusion regarding alleged offer of possession becomes all the mote irresistible because the respondent has not produced any cogent material manifesting that the project is complete and the unit purchased by the complainant is ready for delivery of possession as per law. So, considering that complainants even after lapse of more than twelve years from the date of sale- purchase agreement have not yet received possession, the Authority prima-facie finds it a fit case for allowing refund.

4. The complainant has produced receipts issued by the respondent and the agreement entered between the parties, to prove the payments made to the respondent. If the total amount shown payable in the receipts and acknowledged in the agreement is calculated, the same works out to Rs. 25,64,500/-. So, the Authority prima-facie finds substance in the complainant's

contention that he has already paid a sum of Rs. 23,51,250/- to the respondent.

5. In the aforesaid circumstances, the Authority directs the respondent to produce the original receipt and ledger books of the year 2007 and to file his response to the question as to why he on receiving just a sum of Rs. 7,68,750/- had issued receipts and acknowledgement for an amount of Rs. 23,51,250/-. He is also directed to produce documents revealing present status of the license, the project and the unit allotted to the complainant."

25. Vide above mentioned order, Authority has dealt in detail the issue of offer of possession given by respondent to complainant in 2008 and 2009. It was observed that respondent has utterly failed to complete the project and handover possession to the complainant. No occupation certificate has been received by the respondent from the competent authority.

26. Therefore, Authority hereby further confirms that respondent has failed in his obligation to complete the project and hand over possession of booked unit to complainant. BBA was executed complainant and respondent no. 1 and 2 on 13.04.2007. 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.

26. In present complaint, the unit was booked in 2007 by the complainant and BBA was executed on 13.04.2007. Taking a period of 3 years from the date of BBA, i.e., 13.04.2007 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 13.04.2010. There is a delay of more than 12 years on the part of respondents in offering the possession of the unit. Complainant does not wish to stay with the project and is seeking refund of the money deposited by him. Hence, inordinate delay of more than 12 years 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 wait endlessly for completion of the project and delivery of possession. Complainant 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.

Further, it is being made clear that as per the definition of promoter given in section 2 (zk) of the Act, both builder and land owner falls under the definition of promoter. Section 2(zk) of the Act is reproduced below:

> *"promoter" means,—*
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
> *(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
> *(iii) any development authority or any other public body in respect of allottees of—*
> *(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
> *(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*
> *(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
> *(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*
> *(vi) such other person who constructs any building or apartment for sale to the general public.*
> *Explanation.—For the purposes of this clause, where the person who constructs or converts a building into*

apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;"

27. By the virtue of above mentioned definition, respondent 1, 2 (builder) and respondent 3, 4 (land owners) both are jointly and severally liable to refund the paid amount along with interest to the complainant. Nevertheless, since complainant entered into builder buyer agreement with respondent no. 1 and 2; respondent no. 1 and 2 were liable to deliver possession of the booked unit to complainant. Moreover, complainant deposited his money for the purchase of the unit with respondent no. 1 and 2. Therefore, respondent no. 1 and 2 have the prime responsibility to refund the paid amount to the complainant. Respondent 3 and 4 also cannot escape from their liability towards the complainant if the claim of the complainant is not satisfied by respondent 1 and 2.

28. 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(za) of the Act which is as under:

> *"2(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;"

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".*

29. 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. 26.04.2023 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.

30. Complainant submitted the receipts of payment made by him to the respondent vide application dated 22.08.219. Respondent had been given several opportunities to produce original receipts, statement of accounts and customer ledger to refute that complainant paid Rs. 26,01,250/- to respondent. However, respondent failed to produce any documents. Therefore, receipts submitted by complainant are being taken on record for the calculation of the interest. Perusal of the receipts and details of payment submitted by complainant reveals that complainant has paid a total sum of Rs. 26,01,520/- to respondent till 19.07.2008 towards the sales consideration of the unit. Authority has got calculated the interest payable to the complainants till date of order i.e., 26.04.2023. Respondent shall refund this amount of Rs. 26,01,520/- 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.	2,50,000	2007-03-24	4,30,785
2.	5,80,000	2007-04-11	9,96,361
3.	3,50,000	2007-04-12	6,01,149

4.	6,18,750	2007-04-12	10,62,746
5.	5,52,500	2007-04-12	9,48,957
6.	1,50,000	2007-04-13	2,57,592
	Total principal amount= ₹ 26,01,250		**Total interest = ₹ 44,55,745**

31. Interest is calculated on the amount of Rs. 26,01,520/- from the date of receipts till the date of the order i.e., 26.04.2023 @ SBI MCLR + 2% i.e., 10.70% which comes out to be Rs. 44,55,745/- Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to Rs. 70,56,995/-

32. With respect to other reliefs at serial no (A) to (C) and (E) to (F) 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

33. 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 no. 1 and 2 have prime responsibility to refund the entire amount of ₹ 70,56,995/- to the complainant. If respondent 1 and 2 fails then respondent 3 and 4 will refund the entire amount to 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.

34. The complaint is, accordingly, **disposed of.** File be consigned to the record room and order be uploaded on the website of the Authority.

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

.....
NADIM AKHTAR
[MEMBER]