



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>1459 of 2022</b>
<b>Date of filing:</b>	<b>28.06.2022</b>
<b>Date of first hearing:</b>	<b>09.08.2022</b>
<b>Date of decision:</b>	<b>29.03.2023</b>

1. Pramod Kumar

s/o Sh. Lakshman Chandra

R/o House no. B-1601, Civitech Stadia, Sector 79, Noida- 201305

2. Sangeeta W/o Pramod Kumar R/o House no. B-1601, Civitech Stadia,  
Sector 79, Noida-201305

3. Prashant Mohan, S/o Pramod Kumar R/o House no. B-1601, Civitech Stadia,  
Sector -79, Noida-201305.

....COMPLAINANT(S)

VERSUS

1. M/S Splendor Landbase Limited

Unit no.501-511, Splendor Forum,5<sup>th</sup> floor, Plot no.3

Jasola District Centre, New Delhi -110025

2. M/s Splendor Landbase Ltd.

Unit no. 501-511, Splendor Forum, 5<sup>th</sup> floor, Plot no.3, Jasola

3. Shri Hriday Vikram, B-402, New Friends Colony
4. Ajit Singh Hora, E-52, Panchshila Park
5. S G Manjunath, 98, Katwaria, Sarai, house no.54, 1<sup>st</sup> floor, near DND Public School

....RESPONDENT(S)

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

**Present:** - Ms. Rupali S Verma, learned counsel for the complainants.  
                 Mr. Shobit Phutela, learned counsel for the respondents through  
                 video conference.

**ORDER (DR. GEETA RATHEE SINGH-MEMBER)**

1. Present complaint dated 28.06.2022 has been filed by complainants 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.

*Geeta Rathee*

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 possession, delay period, if any, have been detailed in the following table:

S.N.	Particulars	Details
1.	Name of the project	Splendor Grande, Sector 19, Panipat
2.	Nature of the Project	Group housing colony
3.	RERA Registered/not registered	Registered vide registration no. 362 OF 2017 DATED 17-11-2017
5.	Flat no.	706
6.	Tower No.	Tower A-3
6.	Unit area admeasuring	153.28 sq. mtr
7.	Booking Date	05.03.2013
8.	Date of apartment buyers' agreement	05.03.2014
9.	Possession Clause	<b>Clause 11.2 of Apartment buyers Agreement</b> <i>The developer shall, under normal conditions, complete the construction of tower in which the said unit is located within a period of 42 months from the start of the construction or execution of the agreement whichever is later beyond which, the Developer shall</i>

		<p>further he entitled to a grace period of another 6 (six) months. The construction shall be in accordance with the said plans and specifications stated herein as Annexure-V subject to such additions, deletions, alterations modifications in the layout, tower plans, change in number, dimensions, height, size, area, specification of the said unit or change of the entire scheme as the Developer may consider necessary or may be required by any competent Authority to be made in them or any of them.</p>
10.	Deemed date of possession	05.03.2018
11.	Basic Sale Price	56,12,700/- (exclusive of taxes)
12.	Amount paid by the complainants	46,17,893/-
13.	Delay in handing over of possession from the due date of possession	4 years
14.	Offer of possession	Not made

**FACTS STATED BY THE COMPLAINANT:**

3. That the complainants booked an apartment in the project of the respondent namely 'Splendor Grande' on 05.03.2013. On 24.04.2013, an allotment letter was issued to the complainants for Apartment bearing no 706., Tower A-3, admeasuring super area of 1650 sq. ft. on the project namely "Splendor Grande" situated in Sector 19, Panipat, Haryana. The complainants had paid Rs 10,00,000/- towards the booking of the Unit. A copy of allotment letter dated 24.04.2013 is annexed herewith as Annexure C-1 of the complaint.
4. That another allotment letter was offered to the complainants for same unit on 06.11.2013, in order to circumvent the issue of delay. The allotment letter dated 06.11.2013 is annexed herewith as Annexure C-2 of the complaint.
5. That an apartment buyer's agreement was executed between the parties on 05.03.2014. The complainants had made payment of ₹ 17,92,000/- till the time the execution of buyer's agreement. As per the terms and conditions of the executed buyer's agreement, the basic sale price of the apartment was fixed at Rs.56.12,700.00 (exclusive of taxes) out of which the complainants had already paid Rs. 46,17,893/- to the Respondents. A copy of buyer's agreement dated 05.03.2014 is annexed herewith as Annexure C-3 of the complaint.

6. That respondents had demanded total amount of ₹ 34,57,839/- towards the sale consideration till 2016, however, respondents failed to construct the project as per the scheduled timeline and later the project was abandoned by the Respondents. Considering the start date strictly as per the buyer's agreement, though the same is disputed, the committed period of 42 months from execution of apartment buyer agreement came to an end on 05.09.2017.
7. That the complainants paid all the demands as and when raised by the respondents however, respondents miserably failed to adhere to the timelines of completion committed by them in the agreement for sale. A true copy of statement of account dated 15.09.2016 issued by respondents is annexed herewith as Annexure C-4.
8. That the terms and conditions of the Buyer's Agreement are not only arbitrary and one-sided but are also contrary to the provisions of the RERA Act.
9. That the complainants paid all the demands as and when raised by the Respondents however, respondents miserably failed to adhere to the timelines of completion committed by them in the agreement for sale. A true copy of statement of account dated 15.09.2016 issued by respondents is annexed herewith as Annexure C-4.
10. That on 20.12.2016, respondents raised an additional, illegal, and arbitrary demand of Rs.82,698/- against value-added tax (VAT) under the

scheme namely Haryana Alternative Tax Compliance Scheme for Contractors, 2016. The complainants paid the demand raised by the respondents but the complainants have strong apprehension that the same has not been paid to the statutory authority. Therefore, the respondents may place on record the proofs of the deposits of all the taxes levied on the complainants to the appropriate statutory Authority.

11. That the complainants have been paying the statutory taxes and dues in the form of EDC/IDC etc. as and when demanded by the respondents but at the same time the complainants have strong apprehension that the same have been siphoned off along with the sale consideration towards the apartment allotted to the complainants, deposited with the respondents.
12. That as per clause 9.3 of the apartment buyer's agreement, the respondents are entitled to charge 18% interest on the delayed payments/sale consideration, whereas, as per clause 11.4 of the agreement, in case the company is unable to develop the project within the agreed period of 30 months, it is liable to pay a nominal compensation of Rs.5 per sq. ft. per month for the delayed period. However, complainants are also entitled to same rate of interest as is charged by the respondents for delay in payment as per the agreement.
13. That the tripartite agreement was executed between the complainants, the respondents-developer and HDFC Limited on 06.06.2017 and HDFC limited has granted loan of Rs. 21,50,000/- to the complainants. However,

the complainants took the disbursement of the Rs 4,84,319/- only. Copy of tripartite agreement dated 06.06.2017 is annexed as Annexure C-5.

14. That on 04.10.2019, respondents raised another illegal demand of Rs. 3,36,394/-. However, respondents had not completed the corresponding stage of construction. The complainants were forced to pay the said demand. A true copy of the demand letter dated 04.10.2019 is annexed herewith as Annexure C-6 of the complaint.
15. That complainants repaid the loan availed by HDFC Ltd. and on 25.04.2022, HDFC Limited issued a NOC in regard to the same. A true Copy of NOC dated 25.04.2022 issued by HDFC Ltd. received from the bank is annexed as Annexure C-7 of the complaint.
16. That the construction at the site of the project remained halted for a very long time and the respondents failed to deliver the timely possession but the respondents kept raising frivolous demands from the complainants.
17. That on 02.02.2022, another illegal demand of Rs. 4,19,420.00/- (including interest) was raised by the respondents. A true copy of demand letter dated 23.02.2022 is annexed as Annexure C-8 of the complaint.
18. That the complainants had paid all instalments as per the demands raised by the respondents but the project is not complete till date. True copies of receipts issued by the respondents against the payments made are annexed as Annexure C-9 (Colly) of the complaint.



19. That for all the above foregoing reasons, the complainants are entitled to refund of their deposited amount along with prescribed rate interest as per Real Estate (Regulation and Development) Act, 2016.

**RELIEF SOUGHT:**

20. The complainants in their complaint have sought following reliefs:
- (i) Respondents be directed to refund the amount of Rs 46,17,893/- alongwith prescribed rate of interest from the date of respective deposits till the date of refund.
  - (ii) The respondents may be directed to place on record all the statutory permissions and proofs of deposits like E.D.C and I.D.C charges etc. and proper utilisation proof of the sale consideration received from the complainants/collected from the complainants and in case of default, financial forensic audit may kindly be ordered against the respondents in terms of power vested in this Hon'ble Authority under section 35, 36 and 37 of RERA Act, 2016.
  - (iii) The Authority may consider granting relief of compensation of Rs 5,00,000/- for causing harassment, mental agony and undue hardships suffered by the complainants.

**REPLY ON BEHALF OF THE RESPONDENT:**

21. Learned counsel for the respondent no. 1 i.e., Splendor Landbase Limited has filed his reply on 18.10.2022 pleading therein:

22. That the complainants had voluntarily invested in the project i.e., "Splendor Grande" of the respondents Company at, Sector 19, Panipat, Haryana. The said project is duly registered with this HRERA, Panchkula. The apartment buyer's agreement was executed between the parties on 05.03.2014.
23. That the respondents have received an amount of ₹46,17,893/- from the complainant. A copy of the statement of account is annexed as Annexure R-7.
24. That when the respondents Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent Company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. The Act penalizes the developers of the project much more severely than stipulated in the terms and conditions of the allotment of the said plot, signed and submitted by the complainant to the respondent company.
25. That the Real Estate (Regulation and Development) Act, 2016, has been made fully operational with effect from 1st of May 2017. In the State of Haryana, Haryana Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 28.07.2017. At this stage, it is pertinent to submit that any new enactment of laws is to be applied prospectively as held by the Hon'ble Supreme Court in catena of judgments.

In the matter of "CIT Vatika Township (P) Ltd", it has been held that any new legislation ought not to change the character of any past transactions carried out upon the faith of the then existing law. In fact, it is a well settled law that the retrospective operation of statute may introduce such element of unreasonableness as was held in "State of West Bengal vs. SC Bose" and "Express Newspapers vs UOI". Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively and accordingly no action can be lawfully initiated for anything before the Id. Authority related to period prior to registration of the project under RERA.

26. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
27. That complainants herein as an investor and have 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.
28. That the respondents company herein have so far invested a substantial amount of Rs. 182 Crores approx. in the said project, which has in turn raised financial liabilities of the respondent company. Since majority of the customers of the said project have defaulted in making timely

payments towards the said project, the respondents company was constrained to avail a construction loan from the Punjab & Sind Bank and from Indiabulls Housing Finance Ltd. to part finance the construction of the said Project which was subsequently foreclosed after RERA registration of the said Project.

29. That all the amounts received by the respondents company from its customers were deposited in an escrow Account with the Punjab & Sind Bank and respondent has opened another Escrow Account for the said project as per the requirement of RERA registration. The respondents company have been utilizing the said amount deposited in an escrow account only for the purposes of construction and completing the said project and payment of statutory dues for the said project.
30. That majority of the allottees/applicants in the said project have defaulted in making payment of outstanding dues as per the construction linked payment plan opted by them and as on date a sum of more than Rs.12,00,00,000/- (Rupees Twelve Crores Only) approximately is due from the customers against which no payment has been received by the respondent company from the last three years despite issuing several letters and reminders for the same.
31. That despite respondents have not received the requisite payments from its customers, the company have ensured that all government levies and

taxes such as the External Development Charges, Infrastructure Development Charges etc. had been fully paid by the respondent to the concerned Regulatory Authorities / Departments. Also, in order to continue the construction of the said project, the respondents have carried out the construction of the said project through its own sources and borrowings.

32. That the construction of the said project has not reached the stage as imagined due to various force majeure reasons beyond the control of the Respondent such as;
- a. delay in receipt of requisite approvals from the concerned regulatory authorities;
  - b. In compliance of the directions/ measures from the National Green Tribunal / Haryana State Pollution Control Board for maintenance of the quality of the air, respondent has completely stopped the construction work for 2-3 months every year due to which delay has caused in construction of the project.
  - c. Various allottees including the complainants have defaulted in making payment of outstanding amount as per construction linked payment plan opted by them under the agreement, which have contributed to delay in construction of the said project.
  - d. Severe slump in the real estate market.

e. During the period of the construction of the said project, the respondent had to revise the building plans due to low potential, poor response of prospective buyers for multi-story flats. The available FAR of the said project was also sacrificed during this revision. The revised building plans of the said project was approved by the department vide Memo dated 22.07.2019. The repeated revision in the building plan has attributed to some delay in construction of the Project.

33. That complainants were informed through various communication letters that the construction of the project has got delayed due to the force majeure conditions. A Copy of letters dated 07.04.2020, 09.05.2020 and 24.08.2020 sent by the respondent company to the complainants are annexed as ANNEXURE R-3 (Colly).
34. That the Covid-19 situation hampered the construction works due to which delay has been caused in the completion of the said project.
35. The Complainants are not entitled to any relief from the Ld. Authority as the entire money paid by the Complainants have already been invested and used for the purposes of carrying out the construction of the said project.
36. That despite several constraints faced by the respondent company in completing the construction of the said project, respondent has tried to complete the said project timely and quarterly progress reports are being submitted to the Hon'ble Authority from time to time.

37. That this Ld. Authority has given the promoter an opportunity for completing the project or phase by prescribing fresh time period so that it will not meet with the penal consequences laid down under RERA Act. The completion date of the Said Project i.e., Phase-1 registered with this Ld. Authority was 31.03.2022 which was further extended upto 31.12.2022 in pursuance of Advisory issued by this Hon'ble Authority vide Ends. no. dated 26.05.2020 and other advisory issued for the extension of the period of registration by nine months due to outbreak of COVID 19 situation. Therefore, the completion date of the said Project as per extension of registration granted by this Hon'ble Authority is 31.12.2023.
38. That after compliance of all the due diligence and other formalities, SBICAP Ventures Limited had given final approval of investment in the said Project/Phase 1 of the respondent, by way of subscribing to Non-Convertible Debentures of the Respondents Company under SWAMIH INVESTMENT FUND I Special Window for Completion of Construction of Affordable and Mid-Income Housing Projects, announced by Hon'ble Finance Minister of India on 06.11. 2019. The documentations qua said transaction investments by SWAMIH INVESTMENT FUND had been executed and Rs.20 Crores approx. had already been disbursed so far for speedy completion of the said Project. Copy of the Sanction Approval issued by SBICAP Ventures Limited

SWAMIH Investment Fund and emails and supporting documents issued on behalf of SBICAP Ventures Limited by their lawyers regarding execution of said documents are annexed as ANNEXURE R-4 (Colly).

39. That the construction of the said Project is going on in full swing and the finishing works are being undertaken which will be followed by applying for grant of occupation certificate of the said Project and offering possession for fitouts to the allottees.
40. That the Respondents Company has duly updated the Petitioner at various instances regarding the disbursal of amount for the timely completion of the project vide letter dated 15.03.2021, 17.11.2021, 03.01.2022. Copy of said Letters are annexed as ANNEXURE R-5.
41. That the respondents had already invested more than Rs.182 Crore approx. in the said Project and if complainant at this stage has allowed the relief of refund, it will certainly create an adverse condition for other buyers and jeopardise completion deadline of the entire project.
42. That keeping in view the afore mentioned facts and circumstances, Hon'ble Authority has also disposed of a bunch of seven similar complaints against the Respondent, had passed a landmark order dated 11.05.2022 in the lead complaint No. 255 of 2021 titled as '**Ramesh Malik Vs. Splendor Landbase Ltd**' wherein Authority has observed which is reproduced as below:



*"Authority at this stage would observe that to allow refund to some allottee could jeopardise the entire project because it could lead to similar demands from other allottees. In this case, there are 135 allottees of the project out of which only 6 have approached the Authority for refund. Rest of allottees are continuing with the project. This project is being financed under SWAMIH-1 funds. The fund will not allow their loan money to be diverted towards refund to be granted to the allottees. Further, remaining allottees would like that their money is invested for completion of the project rather than allowing refund to some allottees. It is, therefore, a difficult situation. Considered view of this Authority in these circumstances is to adopt a balanced approach as mandated by objectives and provisions of the Act. For above reasons, Authority is unable to agree with contentions of the complainants...."*

43. Therefore, the instant Complainants are liable to be decided in the ratio of above judgment already passed by this Hon'ble Authority.
44. That the Complainants have been a regular defaulter in making payments against the unit purchased by him. The said fact can be very well verified from the various Reminder Letters/Demand Letters issued by the Respondent Company to the Complainant which are been annexed as Annexure R-6.
45. That no cause of action has arisen in favour of the Complainants to file the present complaint.

**ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

46. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for the complainants submitted that complainant no. 1 is a retired person and he is no more interested in taking over

the possession of the apartment in question. Therefore, complainants are seeking the only relief of refund along with interest from this Hon'ble Authority as they are entitled under section 18 of the RERA Act.

Learned counsel for the respondents on the other hand, submitted that respondent has already invested huge amount in the project and refund at this stage will create an adverse condition for other allottees and jeopardize the rights of the other allottees who want possession of the allotted unit. In support of his argument, he reiterated the order passed by the Hon'ble Authority on 11.05.2022 in complaint no. 255 of 2021 as stated in para 23 of his reply. He stated that an appeal against the aforesaid order is also pending before the Hon'ble Appellate Tribunal. Therefore, Authority may pass the orders keeping in view the said order dated 11.05.2022 passed by the Hon'ble Authority.

He further submitted that the respondent no. 1 is trying to complete the project within the time schedule and going to apply for the occupation certificate for the said project.

Learned counsel for the complainants on the other hand argued that Hon'ble Supreme Court in landmark judgment of **Newtech Promoter and Developers Ltd, vs state of U.P** observed that if an allottee does not wishes to continue with the project then he has an unqualified right for the relief of the refund. Therefore, on the basis of the law laid down by the Hon'ble Supreme Court, she seeks the relief of refund along with interest.

**F. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT**

**F.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 no. 1 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(c) 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 complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

**F.II Objections raised by the respondent regarding force majeure conditions.**

The obligation to deliver possession within a period of 48 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent such as the stoppage of construction work due to orders of National Green Tribunal / Haryana State Pollution Control Board for maintenance of the quality of the air, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2018 and the NGT orders referred by the respondent pertains to year 2019, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore*

*Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020 has observed that:*

*“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since septemeber,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*

*The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used as an excuse for non-performance of contract for which deadline was much before the outbreak itself.”*

So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

**F.III Objections raised by the respondent stating that complainants herein are an investor and have invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains.**

The complainants herein are the allottees/homebuyers who have made their substantial investment from their 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 in terms of home buyer's agreement but their bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage, complainants have approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allottee of respondent-promoter. As per definition of allottee provided in clause 2(d) of RERA Act,2016, present complainants are duly covered in it and are entitled to file present complainant for seeking the relief claimed by them. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

*"Allottee-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".*

In view of the above-mentioned definition of 'allottee' as well as the terms and conditions of the apartment buyer's agreement executed between the parties, it is crystal clear that complainants have been allotted unit 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 05.03.2014. The concept of investor is not

defined or referred in the RERA Act. As per the definition given under section 2 of the Act, there will be a "promoter" and an "allottee" and they caused be a party having a status of an investor. So, the plea of respondent to dismiss the complaint on the ground that complainants herein are investor does not hold merit and same is rejected.

Furthermore, under section 31 of the RERA Act, 2016, "any aggrieved person" can file a complaint before the Authority or the adjudicating officer, however the complainant can only be against a promoter, real estate agent or an allottee. Thus, it is clear that under RERA Act, it is not a pre-condition that the complainant has to be a consumer/allottee only.

#### **G. ISSUES FOR ADJUDICATION**

47. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

#### **H. OBSERVATIONS AND DECISION OF THE AUTHORITY**

48. In light of the facts of the case and perusal of document placed on record, Authority observes as follows:
- i) Respondents have admitted that an apartment buyer agreement was executed on 05.03.2014 and complainants have paid the amount of ₹46,17,893/- against the basic sale price of ₹56,12,700/- which has been duly acknowledged by way of receipts as well as in their written statements.



ii) As per the clause 11.2 of the apartment buyer's agreement, possession of the apartment was to be delivered upto 05.03.2018, however, no offer of possession has been made till date even after lapse of 4 years from the deemed date of the possession.

iii) Regarding status of the project, it has been submitted by the respondents that construction work is going in progress and respondents/promoter is trying to complete the project at earliest and to apply for occupation certificate thereafter immediately. Fact remains that complainants are waiting for the possession of the unit from last 4 years and there is no stipulated time given by respondents even today for handing over of possession. Complainant no.1 herein is a senior citizen who has brought the unit in question investing all the hard earned savings and belief upon the respondents that promoter will take care of all the necessary approvals and completion of construction within time, which has not been done by respondents in this case. Authority is conscious of the order dated 11.05.2022 passed in **complaint no. 255/2021 titled Ramesh Malik vs Splendor Landbase Ltd** whereby refund of the paid amount to the allottees was not allowed as same could have jeopardised the entire project as the project is being financed under SWAMIH-I funds. It is well within the knowledge of the Authority that respondents had made financial arrangements for completion of the project but after

lapse of 4 years from deemed date of possession the complainants cannot be forced to kept waiting endlessly for possession of the booked unit. In the foregoing circumstances, already one year has passed since the date of that order and respondent is again taking the same plea without committing a specific time period. Further, respondent has not placed on record any photographs showing progress towards completion of project/unit to convince the complainants for possession. In event of such circumstances, allottee/complainants cannot be forced to wait for possession of the unit. It is to mention here the judgement dated 02.04.2019 passed by **Hon'ble Supreme Court in Civil Appel no. 12238 of 2018 titled as Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan** whereby it is held that the flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired. Relevant part of said judgement is reproduced below for reference:-

*"9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the*

*Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the 22 Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest.”*

(iv) Further, Hon’ble Supreme Court in the matter of “*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*” in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

“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 decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

49. Since the promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of builder buyer agreement till date. The complainants cannot be expected to wait endlessly for taking the possession of the alleged unit for which they have paid a considerable amount towards the sale consideration. Therefore, this bench is of considered view that presently complainants cannot be forced to continue with the project and wait for the delivery of the possession for indefinite time period. Even though the respondent has been granted an extension of registration till 31.12.2023 on the ground of force majeure covid-19. This is to clarify that the extension granted is for the completion of the project. On account of grant of extension, no allottee can either be assured or forced to continue with the project. Further relying upon the ratio of law laid down in the judgment of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.** Authority reconfirms its view that complainants shall be entitled to seek refund as per provisions of section 18 RERA Act, 2016 read with section 15 of HRERA Rules 2017 for delay in handing over of possession by the respondents. As per Section 18 of

Act, interest shall be awarded at such rate as may be prescribed. 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;

50. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

51. 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. 29.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

52. 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".*

53. Thus, respondents will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority has got calculated the interest payable to the complainants and accordingly total amount payable to the complainants including interest calculated at the rate 10.70% till the date of this order and said amount works out to ₹ 38,48,022/- is depicted in table below:

Sr. No.	Date of Payment	Principal Amount	Interest accrued til 29.03.2023	Total
1.	07.03.2013	₹ 5,00,000/-	₹ 5,38,664/-	₹10,38,664/-
2.	19.03.2013	₹ 5,00,000/-	₹ 5,36,905/-	₹10,36,905/-
3.	06.12.2013	₹4,50,000/-	₹4,48,652/-	₹8,98,652/-
4.	10.12.2013	₹ 3,42,123/-	₹3,40,697/-	₹6,82,820/-
5.	30.10.2014	₹ 6,68,196/-	₹6,01,946/-	₹12,70,142/-

6.	06.01.2015	₹ 4,98,384/-	₹3,99,150/-	₹8,97,534/-
7.	23.02.2016	₹ 4,99,136/-	₹3,79,267/-	₹8,78,403/-
8.	03.06.2017	₹ 3,39,337/-	₹2,08,802/-	₹5,48,139/-
9.	08.01.2018	₹ 3,66,323/-	₹2,04,789/-	₹5,71,112/-
10.	19.01.2018	₹ 1,18,000/-	₹65,586/-	₹1,83,586/-
11.	24.10.2019	₹ 3,36,394/-	₹1,23,564/-	₹4,59,958/-
	<b>Total</b>	₹ 46,17,893/-	₹38,48,022/-	₹84,65,915/-

It is pertinent to mention here that complainants claim that he took a disbursement of loan of amount of ₹4,84,319/- and paid to the respondent in the year 2018. However, receipts of amount of ₹4,84,319/- has not been annexed in the complaint file. Respondent on the other hand has admitted the said amount and in their statement of accounts, date of the receipts of payments of the sum of ₹ 4,84,323/- has been mentioned. Thus, the dates for the payment of the amount of ₹4,84,323/- has been taken from the statement of account of the respondent.

54. The complainants are seeking compensation on account of mental agony, torture and harassment caused for delay in possession. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers PvtL Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation

charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

55. Complainants are also seeking direction against the respondents under Section 35 of RERA Act, 2016 to place on record all statutory approvals and sanctions of the project and to provide complete details of EDC/IDC alongwith statutory dues. Said reliefs are mentioned at serial no. (ii) of relief sought. It is pertinent to mention here this relief has neither been argued by the complainants at the time of hearing nor any documentary evidence has been placed to adjudicate upon the same. Further, said relief has nowhere been claimed by the complainants in their complaint nor pressed by ld. counsel for complainants during arguments. Hence, complainants prayer to award them is rejected.

**DIRECTIONS OF THE AUTHORITY**

56. 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) Respondents are is directed to refund the entire amount of to the complainants along with interest of ₹38,48,022/- in equal share..
- (ii) A period of 90 days is given to the respondents 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.
59. Complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading order on the website of the Authority.

  
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**NADIM AKHTAR**  
**[MEMBER]**

  
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**Dr GEETA RATHEE SINGH**  
**[MEMBER]**