HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	10 of 2022
Date of filing:	05.01.2022
Date of first hearing:	15.02.2022
Date of decision:	03.05.2023

POONAM KHERA

R/o E 2/5 (GF), DLF VALLEY,

SECTOR-3, Panchkula

....COMPLAINANT

VERSUS

DLF Homes Panchkula Private Limited

SCO No. 190-91-92,

Sector 8-C,

Chandigarh- 160009

....RESPONDENT(S)

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

Present: Mr. Kunal Thapa, counsel for the complainant.

Mrs. Rupali S Verma, counsel for the respondent.

<u>ORDER</u> (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 29 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 fulfill 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 unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	THE VALLEY, SECTOR-3, PANCHKULA
2.	RERA registered/not registered	Registered
3.	Date of Booking	07.03.2010 (by 1st allottee)
4.	Transferred to second allottee	09.02.2012
5.	Transferred to third allottee	17.06.2015
6.	Flat no.	E2/10, GF

7.	Flat area	1550 sq.ft.
8.	Date of builder buyer agreement	07.12.2010
9.	Deemed date of possession	07.12.2012
10.	Basic sale price	₹ 33,87,524.97
11.	Amount paid by complainant	₹ 53,72,774/-
12.	Offer of possession	03.02.2016

B. FACTS OF THE COMPLAINANT

3. Complainant purchased a unit in the respondent's project i.e., The Valley in Panchkula, Haryana on 17.06.2015 and Unit No. E2/10 (GF) was transferred to her name. Complainant is the third allottee of the project. The first allottee booked the flat on 07.03.2010 and later the unit was transferred to another allottee on 09.02.2012 and later on the unit was transferred in the name of the complainant on 17.06.2015.

4. That on 17.06.2015, the unit was transferred on the name of the complainant and the Builder buyer Agreement (herein referred to as BBA) dated 10.12.2010 is annexed as ANNEXURE C-1 was endorsed in the name of the complainant. As per clause 11 (a) of the BBA, the possession was needed to be handed over within 24 months i.e., by 10.12.2012, however the alleged possession of the unit was offered as on

03.02.2016. The offer of possession dated 03.02.2016 is annexed as ANNEXURE C-2.

5. As per the BBA, the total saleable area of the unit was 1550 Sq ft, however, the respondent offered of possession of the unit vide possession letter dated 03.02.2016, annexed as ANNEXURE C-2 in which the respondent had also raised a demand of Rs. (Four Lacs and Seventy thousand only) in lieu of the arbitrary increased area of unit around 200 Sq ft. i.e., from 1550 Sq ft to 1750 Sq ft as well as PLC. It is submitted herein that the said increase in the area was done by the respondent without any information/justification to the complainant at the final stage of possession wherein the complainant has no other option other than depositing the demanded amount as majority of her hard-earned money was already locked in with the respondent. It is also pertinent to mention herein that no Occupancy Certificate has been furnished to the complainant and only a reference has been given with respect to the occupancy certificate in the possession letter. That such arbitrary increase in the area is unfair trade practised by the respondent and such amount extracted from the complainant must be refunded back to her.

6. That approvals regarding revision in layout plan and service plans sought on 11.3.2013 and 20.05.2013 were received on 06.09.2013 and 14.08.2014 respectively. Complainant alleges that respondent had falsely represented that it had all the approvals and the same constitutes as an

unfair trade practice under section 7 (1)(C) of the Real Estate (Regulation & Development) Act, 2016.

7. It is submitted herein that the complainant had urged and requested the respondent to handover the unit as assured by them at the time of transfer of the unit in her name, however, the respondent failed to comply with their legal obligation and offered them the unit after around one year from the date of the transfer vide possession letter dated 03.02.2016, annexed as ANNEXURE C-2. It is further submitted herein that at the time of alleged offer of possession, the whole project was inhabitable as well as the unit offered was not complete in all of its aspect. The complainant time and again requested the respondent to rectify the defects/shortcoming in the said unit but the said request fell unto the deaf ears of the respondent. However, the respondent partially completed the project making it habitable which eventually led to complainant taking over possession of the unit in the year 2018.

8. Therefore, the complainant has approached the Authority with grievance that as per BBA the total saleable area of the unit was 1550 sq. ft. however, at the time of offer of possession the respondent raised demand of ₹4,70,000/- in lieu of arbitrary increased area of the unit around 200 sq ft. from 1550 sq. ft. t 1750 sq. ft. as well as PLC. However, the area was increased by the respondent without any information to the complainant at the final stage of the possession leaving complainant with no other

option than to pay the entire demand amount. Further, no occupation certificate was given to the complainant.

6. That even after continuous request of the complainant to deliver the unit as assured respondent failed to comply with the same and offered the unit after one year from the date of the transfer. Possession letter dated 03.02.2016 is annexed as Annexure C-2. Further unit offered was not in a state to live. Therefore the complainant has approached the Authority stating that since the respondent has failed to handover the unit to the complainant within the stipulated time period therefore the complainant is liable to relief of delay interest.

C. RELIEF SOUGHT

5. The complainant in his complaint has prayed that the respondent be directed to:

    (i) To direct the respondent to hand over the interest on the account of delayed possession on the complete amount which has been deposited with the respondent with interest from the date of transfer as per the Real Estate (Regulation & Development) Act, 2016 R/w Haryana Real Estate (Regulation & Development) Rules, 2017 at the rate prescribed under the Act. Calculation sheet is annexed herewith as Annexure C-5.

(ii) To direct the respondent to hand over the excess amount demanded and accepted on account of the increased area along with 9% interest.

(iii) Any other relief or claim which the Hon'ble Authority deems appropriate

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

6. Original Allottee- Mr. Ajay Kadian submitted an application form to book an Independent Floor admeasuring 1550 sq. ft. (increased to 1750 sq. ft.) at a basic sale price of Rs. 36,42,500/- alongwith EDC & IDC Charges, totalling to Rs. 40,79,600/- excluding applicable taxes, charges towards water and electricity connection, maintenance, deposits and other charges. The said Independent Floor was booked in Building No. DVF-E2/10, Ground Floor # 217, he paid an amount of Rs. 4.00 Lacs as booking amount. A perusal of the application form would show that it contains certain terms and conditions which were duly read and understood by the Complainant before appending his signatures thereon. A true copy of the application form dated 07.03.2010 is annexed as Annexure R-7.

7. In the meantime, a restraint order was passed by the Hon'ble High Court in CWP No. 6230 of 2010 directing the respondent not to create 3rd party rights and to ensure that nature of land shall not change and no further construction activity should be carried out (Annexure R-8). The order

passed by the Hon'ble High Court was assailed before the Hon'ble Supreme Court and the same was stayed. An Independent Floor Buyer's Agreement dated 07.12.2010 was executed between the original allottee and the Answering-RespondentThe said Buyer's Agreement contains various clauses including force majeure clause and subject to the said Clause possession was to be offered within 24 months from the date of execution of Buyer's Agreement dated 07.12.2012.

8. The Original Allottee transferred the unit in question in favour of Col. D.J.S Chahal vide agreement to sell dated 21.01.2012. The Respondent Company after getting all requisite documents signed by both the allottees endorsed the Buyer's Agreement of the unit in question in favour of Col. D.J.S Chahal. In the meantime, in some other matter, an SLP No. 21786-88 of 2010 was filed in the Hon'ble Supreme Court and the Hon'ble Supreme Court restrained the Respondent from raising construction at the project site (Annexure R-10). The interim direction rendered by the Hon'ble Supreme Court in SLP No. 21786-88 of 2010 was vacated.

9. Considering the impediments in development works on account of the aforesaid litigation, a letter dated 02.04.2013 had been written to the predecessor in interest of the Complainant and he was given an offer to exit with refund and 9% interest or give his consent to continue with the

Project with extended timelines. The Respondent did not receive any communication from the predecessor in interest of the Complainant. Col. D.J.S Chahal further transferred the unit in question to the present complainant and agreement to sell dated 08.06.2015 was executed between ColD.J.S Chahal and the complainant which was acknowledged by the Respondent Company. The Respondent Company after getting all requisite documents signed by both the allottees endorsed the Buyer's Agreement in favour of Complainant. The Respondent-Promoter completed the construction works of the unit in question besides other independent floors and applied for issuance of Occupation Certificate.The Competent Authority issued occupation certificate in favour of the Respondent-Promoter. It is submitted that issuance of occupation certificate is inter-alia, indicative of the fact that the independent floor has been constructed strictly in accordance with law and policies formulated by the Department of Town & Country Planning, Haryana. Possession of the Unit was offered to the Complainant along with the final demand letter as per payment schedule plan. It is pertinent to mention here that the Respondent Company offered the possession of the unit question within 7 months from date of endorsement of Buyer's Agreement in the name of Complainant. A true copy of the possession letter dated 03.02.2016 is annexed as Annexure R-12. Real Estate (Regulation and Development) Act, 2016 promulgated and notified in parts.

10. Appropriate Government Haryana in exercise of its powers under Rule 84-Real Estate (Regulation and Development) Act, 2016 framed Rules for implementation of the Parent Act. The Complainant failed to complete possession formalities within 30 days of the issuance of offer of possession and she remained in default of Clause 12 of the Buyer's Agreement and it is only after more than 02 years, she came forward to take the physical possession of the unit in question. In the possession letter, it was clearly mentioned that the initial tentative allotted area of the unit in question was 1550 square feet and the final area of the unit is 1750 square feet. The Complainant accepted the increased area, which was offered to her strictly in terms of conditions of the Buyer's Agreement and she even paid the sale consideration on account of increased area and other charges. The Complainant accepted the possession without any objection.

11. It is almost after 05 years from the date of offer of possession (03.02.2016), present complaint has been filed alleging arbitrary increase in the allotted area and for refund of the alleged excess amount. The complaint is even barred by limitation. That it is pertinent to mention here that the Respondent Company has already offered the possession of the Independent Floor in question and it is the Complainant who is not coming forward to get the conveyance deed executed in her favour. That

the conduct of the Complainant is contrary to the spirit and objective of the Real Estate (Regulation and Development) Act, 2016 and in the respectful submission of the Answering- Respondent, she cannot be allowed unjust enrichment at the cost of the Project. As per the agreement and provisions of the Real Estate (Regulation and Development) Act, 2016, she is obliged to get the conveyance deed register of the Unit, which was offered to her on 03.02.2016.

12. That the Respondent Company has raised the demand from time to time purely as per agreed consideration and as per scheduled mentioned right from the Application Form, Allotment Letter and Independent Floor Buyer Agreement. Respondent has prayed to dismiss the said complaint.

E. JURISDICTION OF THE AUTHORITY

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

E.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 purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning

area Dharuhera (Rewari) therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.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 tor 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.

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.

F. ISSUES FOR ADJUDICATION

14. Whether there is an illegal increase in the area as per the terms of BBA?

15. Whether the complainant is entitled to get interest on the delayed period.

G. OBSERVATIONS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

16. In the present complaint, it is the admitted case of the parties that the original allottee (hereinafter referred as first allottee), Mr. Ajay Kadian R/o 503, Sector - 6, Panchkula booked an independent floor i.e.E-2/10 (ground floor), admeasuring 1550 sqft. (approx.) in the project namely 'The Valley', situated at Sector-3, Panchkula, Haryana. The builder buyer agreement was entered into between the first allottee, Mr. Ajay Kadian and the respondent-promoter on 07.12.2010; as per the builder buyer agreement the possession of the unit was to be delivered within 24 months from the date of builder buyer agreement; the total sale consideration was fixed as Rs. 40,79,600/- (Forty Lakh Seventy-Nine Thousand Six Hundred Only). The first allottee transferred his rights in the unit to the second allottee i.e. Col. D.J.S. Chahal on 09.02.2012 and the respondent company after getting all the requisite documents signed by both the first/original and second allottee endorsed the buyer's agreement of the unit in question in favour of Col. Chahal. Subsequently, the second allottee further sold/ transferred his rights in the unit to the

present complainant i.e. Ms. Poonam Khera (third allottee) and an agreement to sell dated 08.06.2015 was executed between the second allottee and the complainant which was acknowledge/ endorsed by the respondent company in favor of the complainant on 17.06.2015; the respondent offered possession of the unit to the complainant on 03.02.2016, however, the complainant took over the actual physical possession of the unit on 29.03.2018.

17. The complainant has raised two main issues in her complaint that firstly, the respondent failed in his obligation to deliver the possession of the unit as per the builder buyer agreement and therefore, is liable to pay delayed possession charges as per section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 and secondly, that the respondent-promoter has arbitrarily and unauthorizedly enhanced the saleable area from 1550 sqft. as promised in the builder buyer agreement to 1750 sqft. at the time of offer of possession and as such respondent is liable to refund the excess amount charged along-with interest.

18. On perusal of the file Authority observes that the complainant stepped into the shoe of the erstwhile allottee on 17.06.2015 i.e. the day on which the rights in the unit in question were endorsed in her favor by the respondent-promoter. Further, the occupation certificate qua the unit in question was issued by the competent Authority on 10.07.2015. Perusal of the letter of offer of possession (Annexure-R-12) shows that the

respondent offered the possession of the unit to the complainant on 03.02.2016. However, the complainant alleges that the project/unit was in inhabitable condition and therefore, the offer of possession dated 03.02.2016 cannot be treated as a valid offer of possession in the eyes of law, accordingly, the complainant did not take the possession on 03.02.2016 and accepted a delayed offer of possession on 29.03.2018. However, though the complainant has claimed that on 03.02.2016 the project was not in habitable condition but, except the averment there is no substantial material on record to establish that the project was inhabitable on 03.02.2016. Had it been so, the natural cause would have been that the complainant would have either returned the letter to the respondent complaining about the same or would have gone to the project site and click some photographs or would have got some report prepared from an independent competent person/ agency, but, for the reasons best known to the complainant, all or any of such natural act on part of the complainant is missing. It is a cardinal principle of civil jurisprudence that no fact can be established by mere self-serving statement. Thus, in the absence of any convincing material on record to prove/ show that the project was completely uninhabitable on 03.02.2016 this Authority cannot accept the contention of the complainant.

19. Another argument adopted by the learned counsel for the complainant is that even if an occupation certificate has been issued by a competent

Authority that does not quantify if the project was habitable or not at the time of occupation certificate. Learned counsel relied upon a judgement passed by this Authority in *"Sandeep Goyal Vs. Omaxe India P. Ltd." Complaint no. 903/2019* wherein, this Authority had observed that even though the developer obtained an occupation certificate, the said offer was not a valid offer of possession as the unit was not habitable. The Authority refers to its orders dated 21.01.2021 in aforementioned complaint case no. 903/2019 and observes that the factual matrix of Complaint no. 903/2019 and the material brought therein were different from the present complaint. In complaint no. 903/2019, though, the occupation certificate was issued in the year 2018, the complainant has placed on record photographs taken on 11.01.2020, as well as, the report of the Local Commissioner along-with photographs of the area outside the apartment dated 11.12.2020. Those photographs revealed that several civil and finishing works were yet to be carried out in the apartment on the respective dates. Photographs of January, 2020 revealed that even plastering and flooring works, in several portion of the apartment were yet to be carried out. The cumulative effect of all the documents placed before the Authority was that the apartment did not appeared to be habitable even in 2020 i.e. even after filing of the complaint and accordingly, the valid offer of possession could not have been made in 2018. On the contrary, the complainant in the present case has failed to

produce any document/ record/ photograph to show /prove that the project/ unit was inhabitable on the day when offer of possession was made. Therefore, the plea of the complainant that the offer of possession made on 03.02.2016 was not a valid offer of possession is rejected.

20. Nevertheless, as per clause 11(a) of the builder buyer agreement, possession of the unit was to be handed over within 24 months from signing of the builder buyer agreement i.e. by 07.12.2012 (deemed due date of possession) however, offer of possession was made on 03.02.2016.

21. Complainant in her complaint has contended that since the respondent-promoter failed in his obligation to hand over the possession of the unit as per the builder buyer agreement she is entitled to the relief of delayed interest as per section 18 (1) of the Real Estate (Regulation and Development) Act, 2016. At para no. 15 of the complaint the complainant has inter-alia pleaded that "...complainant shall be awarded interest on the account of delayed possession from the date of transfer i.e. 17.06.2015 as per the observations made in *Civil Appeal No. 2285-2330 of 2019 titled DLF Homes Panchkula (P) Ltd. Vs. Sushila Devi and etc. by the Hon'ble Supreme Court of India...*"

22. Furthermore, the complainant has pleaded that by complying with legal / contractual obligations vis-à-vis the unit in question, the complainant even though entered in the picture later surely belongs to the same class

of original allottee and cannot be per-se excluded from getting statutory relief as per law. In this regard, complainant has placed reliance on the judgement of the Hon'ble Apex Court in *CA/7042/2019 "M/s Laureate Buildwell Pvt. Ltd. V/s. Charanjeet Singh decided on 22.07.2021*, wherein, the Hon'ble Supreme Court held that *"...a purchaser who no doubt enters the picture later surely belongs to the same class..."*.

23. The Authority referred/perused the judgement of the Hon'ble Supreme Court (Full Bench) *CA/7042/2019 "M/s Laureate Buildwell Pvt. Ltd. V/s. Charanjeet Singh decided on 22.07.2021"*, wherein, it has been held that the decision in *HUDA V/s. Raje Ram, 2008(17) SCC 407* which was applied in *Wg. Commander Arifur Rehman (Supra) cannot be considered as a good law.* However, with respect to the interest payable to the subsequent allottee held as under, the relevant part of the judgement in the case of *"M/s Laureate Buildwell Pvt. Ltd. (Supra) is reproduced as below:*

> *"31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of*

flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flatTherefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

24. In the present case, rights in the unit in question were transferred in favor of the complainant from her predecessor in interest when an endorsement was made in her favor by the respondent on 17.06.2015, meaning thereby, the complainant entered into the shoe of the second allottee and as such in shoe of the original allottee for all intent and purposes in whose favor the builder buyer agreement was executed after the due date of handing over of possession i.e. 07.12.2012. Therefore, from the ratio of the above said law laid down in *"M/s Laureate Buildwell Pvt. Ltd. (Supra)*, it is held that since the complainant- allottee had stepped into the shoe of the original allottee after the expiry of due date of handing over of the possession, therefore, complainant allottee is entitled for delayed possession charges w.e.f. the date of entering into the shoe of the allottee i.e. 17.06.2015 vide

endorsement dated 17.06.2015 made by the respondent -promoter. Since, the offer of possession made vide letter dated 03.02.2016 was a valid offer of possession, the complainant is entitled to the delayed interest charges for the period 17.06.2015 to 03.02.2016. Payment of delayed possession charges at the prescribed rate of interest. Proviso to Section 18 provides that where an allotee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate, as may be prescribed.

25. 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;

26. Said rate has been prescribed under rule 15 of the rules. Rule 15 has been reproduced 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".

27. Consequently, as per website of the State Bank of India https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e. 03.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

28. Authority has got calculated the interest on total paid amount from 17.06.2015 till offer of possession i.e. 03.02.2016 at the rate of 10.70% . Complainant entered into the shoes of allottees on 17.06.2015, whereby amount of Rs. 42,30,935/- has been paid by him. Thereafter, complainant made two payments of Rs 1,82,125/- and Rs. 65/- prior to offer of possession dated 03.02.2016. Total amount paid by complainant prior to 03.02.2016 is Rs. 44,13,125/- upon which complainant is entitled to delay interest from 17.06.2015 to 03.02.2016 and same works out to ₹2,91,861/- as per detail given in the table below:

Date of transfer 17.06.2015	Principal amount (In Rs.)	Date of offer of possession	Interest accrued (In Rs.)
	42,30,935/-	03.02.2016	2,87,750/-
Amount paid after 03.02.2016	1,82,125/-	03.02.2016	4,111/-
	65/-	03.02.2016	0/-
Total	Total amount paid 44,13,125/-		Total Interest payable 2,91,861/-

29. Coming to another leg of the issue raised by the complainant that the respondent has arbitrarily and unauthorizedly increased the saleable area from 1550 sqft. to 1750 sqft. and, for the said increased area, it has unauthorizedly charged Rs.4,70,000/- (Four lakh Seventy Thousand) and, as such, the complainant is entitled to get a refund of the amount charged unauthorizedly along-with statutory rate of interest. Vide order dated 07.12.2022 the Authority appointed a Local Commissioner to visit the project site for accessing the increased area, however, due to repeated non-availability of the complainant the Local Commissioner could not visited the site and hence, the factual position could not come on record. Be that as it may, learned counsel for the complainant has stated during the course of argument that the complainant does not want to press this issue. He sought liberty to file fresh complaint for availing relief with

respect to this issue. On the basis aforesaid oral submissions of the counsel for the complainant the Authority take a lenient view and the complainant is at liberty to file a fresh complaint on this issue.

30. The respondent has averred that the relief sought by the complainant by way of filing the present complaint does not fall under the jurisdiction of this Hon'ble Authority. The part completion certificate for the project in question had been granted on 23.08.2018 in pursuance of application dated 28.07.2017 and as such, in terms of the definition of ongoing project and Rule 4 (5) of the Haryana Real Estate (Regulation and Development) Rules, 2017 , the project does not require registration. This issue with regard to the fact that what shall constitute an ongoing project has already been settled by the Hon'ble Supreme Court in its judgement in the case of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*** ". Relevant part of the judgement is reproduced below.

> *37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real*

estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

In the judgement quoted above, Hon'ble Supreme Court has settled that the projects in which "completion certificate" has not been granted by the competent Authority before commencement of the RERA, Act 2016 such projects are "on-going projects" and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. In the present complaint the "part completion certificate" in the project was granted on 23.08.2018 which is after the enactment of RERA Act, 2016. Further, completion certificate for the project has yet not been granted by the competent Authority. Thus, the present project is covered within the ambit of "on-going project" and provisions of the RERA Act, 2016 are very much applicable. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

H. DIRECTIONS OF THE AUTHORITY

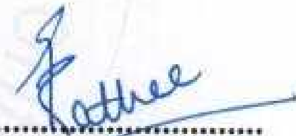
31. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation

cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondents are directed to pay delay interest of Rs. 2,91,861/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order.

(ii) Complainant is at liberty to file fresh complaint before the Authority for the issue of increased area.

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



NADIM AKHTAR
[MEMBER]

Dr. GEETA RATHEE SINGH
[MEMBER]