



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Lead Complaint no.:	438 of 2018
Date of filing:	20.08.2018
Date of first hearing:	23.10.2018
Date of decision:	20.07.2023

1. COMPLAINT NO. 438 OF 2018

Ritu Nanda ...COMPLAINANT

VERSUS

RPS Infrastructure Limited ...RESPONDENT

2. COMPLAINT NO. 439 OF 2018

Ritu Nanda ...COMPLAINANT

VERSUS

RPS Infrastructure Limited ...RESPONDENT

3. COMPLAINT NO. 440 OF 2018

Ritu Nanda Insurance Services ...COMPLAINANT

VERSUS

RPS Infrastructure Limited ...RESPONDENT

4. COMPLAINT NO. 441 OF 2018

Nitasha Nanda ...COMPLAINANT

VERSUS

RPS Infrastructure Limited ...RESPONDENT

5. COMPLAINT NO. 442 OF 2018

Ritu Nanda ...COMPLAINANT

VERSUS

RPS Infrastructure LimitedRESPONDENT

6. COMPLAINT NO. 518 OF 2018

Anita Sharma ...COMPLAINANT

VERSUS

RPS Infrastructure LimitedRESPONDENT

7. COMPLAINT NO. 958 OF 2018

Ankit Saxena & Sharad Saxena ...COMPLAINANTS

VERSUS

RPS Infrastructure LimitedRESPONDENT

8. COMPLAINT NO. 959 OF 2018

Sharad Saxena & Ankit Saxena ...COMPLAINANTS

VERSUS

RPS Infrastructure LimitedRESPONDENT

9. COMPLAINT NO. 999 OF 2018

Cosmos Packaging Systems Pvt. LtdCOMPLAINANT

VERSUS

RPS Infrastructure LimitedRESPONDENT

10. COMPLAINT NO. 499 OF 2018

Rahul Goyal ...COMPLAINANT



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 allottees as per the terms agreed between them.

2. The above-captioned complaints have been taken together as a bunch for disposal since nature and facts of these complaints are identical and relates to **tower- 4 and tower-5** of the same project of the respondent namely "**RPS-Infinia**". Complaint no. 438/2018 titled '**M/s Ritu Nanda Vs. M/s RPS Infrastructure Ltd**' has been taken as lead case and broad facts of the lead complaint are recorded by the Authority in its orders.

A. UNIT AND PROJECT RELATED DETAILS OF THE LEAD COMPLAINT NO. 438/2018.

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	RPS-Infinia, Sector 12/6, Milestone, Sarai Khwaja, Mathura Road, Faridabad (Haryana).
2.	Name of the Promoter	RPS Infrastructure Limited

3.	RERA registered/not registered	Registered <ul style="list-style-type: none"> • Tower-4 registered vide Registration No. 203 of 2017 dated 15.09.2017. • Tower-5 registered vide Registration No. 204 of 2017 dated 15.09.2017.
4.	Unit no.	Oxy-04-0102, First Floor, tower-4
5.	Unit area	8540 square ft. (Super Area approximately)
6.	Date of office space buyer's agreement	18.03.2013
7.	Date of allotment	22.03.2013
8.	Due date of offer of possession	18.03.2016
9.	Possession clause in BBA	Clause 16- "That the intending seller shall endeavour to offer the possession of the unit to the intending buyer within a period of 36 months from the date of the execution of this agreement or from the date of getting various sanctions from the concerned authorities, for starting the construction of the project, whichever is later, exclusive of the time taken by competent authorities towards various approvals such as issuance of the



		occupation certificates/completion certificates etc. with a reasonable extension of time. This is further subject to force majeure circumstances, or any other circumstances not anticipated and beyond the control of the intending seller and on timely receipt of all payments and other charges due/demanded being payable up to the date of offer of possession according to the payment plan opted by the intending buyer.”
10.	Basic sale price	Rs.4,27,00,000/- (excluding service tax, IFMDPS and Registration charges).
11.	Amount paid by complainant	Rs. 4,58,07,636/-
12.	Offer of possession	No offer of possession.
13.	Occupation Certificate	Applied by respondent on 05.08.2022 to DTCP, Haryana with regard to Tower no- 4 and 5 where units w.r.t all complainants situated. (Annexed at Annexure-R-1 in status report submitted by respondent dated 16.08.2022).

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant in the year 2012-2013 applied for booking of IT/ITES unit in the real estate project named “RPS-

Infinia", Faridabad by paying Rs. 42,70,000/-as booking amount vide cheque no.000301 dated 01.02.2013.

4. That the office space buyer's agreement was executed between the complainant and the respondent on 18.03.2013. According to clause 16 of office space buyer's agreement, the respondent was under an obligation to handover the physical possession of the unit to complainant within a period of 36 months from the date of execution of office space Buyer's Agreements or from the date of getting various sanctions from the concerned authorities, for starting the construction of project, whichever is later. Thus, the possession of the unit was due on 18.03.2016 as per the terms of office space buyer's Agreement.
5. Thereafter, respondent issued an allotment letter dated 22.03.2013 vide which complainant was allotted unit No. Oxy-04- 0102 on first floor, tower-4, measuring super area of approximately 8540 sq. ft. True copies of the office space buyer's agreement and allotment letter have been annexed as Annexure(s) P-3 & P-4 respectively in complaint file.
6. That the total sale consideration of the office space was Rs.4,61,16,000/- Against said consideration, complainant had paid an amount of Rs. 4,58,07,636/-. Despite receiving more than 95% of the total consideration, respondent had failed to handover physical possession of the unit within the stipulated time. Copies of payment receipts



issued by the respondent have been annexed as Annexure P-5 (colly) in complaint file. The complainant was burdened with the rent liability of premises since April 2016 only because of the fact that the respondent has failed to handover physical possession of the unit in the stipulated time.

7. That the respondent failed to develop the project as promised at the time of initial booking/allotment. Thus, a legal notice dated 26.03.2018 was sent to the respondent asking for refund on grounds of not delivering the possession.
8. However, in response to said legal notice vide letter dated 17.04.2018, respondent stated that time period required to complete the process of getting numeral approvals, sanctions etc. from government authorities and development of project got extended. It has been submitted that complainant has not condoned the delay in handing over of the possession by the respondents and is entitled to compensation for the delayed period at the rate of 18% compound interest. Copies of the legal notice dated 26.03.2018 and letter dated 17.04.2018 made by respondent have been annexed as Annexure(s) P-10 & P-11 respectively. Hence the present complaint has been filed.

C. RELIEF SOUGHT

9. In view of the above mentioned facts, the complaint has sought following reliefs:



- i. In the event the registration has been granted to the Respondent-Promoter for the project namely, RPS-Infinia at Sector 12/6, Milestone, Sarai Khwaja, Mathura Road, Faridabad (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;
- ii. In exercise of powers under section 35, direct the Respondent Promoter to place on record all statutory approvals and sanctions of the project;
- iii. In exercise of powers under section 35 of RERA and Rule 21 OF HRERA RULES, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;
- iv. To compensate the complainant for the delay in completion of the project and refund the entire amount of Rs.4,58,07,636/- along with compound interest @18% from dates of respective instalments/ realization of the sale consideration by the Respondent-Promoter;
- v. To compensate the complainant for the rent paid from the period April, 2016 till actual delivery of the fully developed apartment/project or refund of the whole amount deposited with the Respondent at the rate of Rs.2,75,000/- per month.



- vi. To pay compensation of Rs. 10,00,000/- on account of harassment, mental agony and undue hardship caused to the Complainant on account of deficiency in service and unfair trade practices;
- vii. The Complaint may be allowed with costs and litigation expenses of Rs.1,00,000/-;
- viii. 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

Learned counsel for the respondent filed detailed reply on 22.11.2018 pleading therein:

10. That the present complaint is not maintainable being outside the jurisdiction of this Authority as all the transactions in respect of unit in question had been taken place at New Delhi at the office of the respondent, therefore, the alleged cause of action, if any, had arisen at Delhi i.e., beyond the territorial jurisdiction of this Authority.
11. That the complainant cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. Both parties are bound by the terms of builder buyer agreement. Complainant has filed this complaint despite as per clause 51 of the agreement dispute involved herein was supposed to be referred to an arbitrator. Further, present complaint involves disputed questions of fact and law



requiring detailed examination and cross examination of several independent and expert witnesses and therefore it cannot be decided in a summary manner by this Authority. For these reasons, jurisdiction of this Authority cannot be invoked in this matter by the complainant.

12. That the unit was provisionally allotted in IT/ITES Colony named RPS-OXY PARK, now known as 'RPS Infinia' vide allotment letter dated 22.03.2013 for a basic Sale price of Rs. 4,27,00,000/- (calculated @ Rs 5000/- per sq. ft) besides additional charges of Rs.25,62,000/- towards EDC and IDC; Rs.8,54,000/- towards IFMS and applicable Taxes as defined & agreed in the buyer's agreement dated 18.03.2013. Further at the time of allotment, the area of the unit i.e., 8540 sq. ft. was tentative and was subject to increase/decrease on receipt of occupation certificate and accordingly the sale consideration of the unit has to be revised.
13. Respondent has admitted that an amount of Rs. 4,58,07,636/- inclusive of service tax has been paid against the said unit till date.
14. Further, respondent has denied that possession of the unit in question was due on 18.03.2016. It was stated that the respondent had to make an endeavor to offer possession of the said unit within 36 months from the date of execution of the buyer's agreement or from the date of getting various sanctions from the concerned authorities required for commencement of construction of the project whichever is later,



exclusive of the time taken by the competent authorities towards various approval such as issuance of the occupation certificates/ completion certificates etc. and subject to force majeure circumstances and subject to receipt of all the payments as per payment plan and other charges due and payable up to date of the offer of possession.

15. That after the receipt of requisite approvals, the construction of tower wherein unit of complainant is situated was commenced and accordingly the allottees were intimated. True Copies of Approval of Building Plans dated 02.09.2010, Environment Clearance dated 07.10.2009, Approval of Fire Fighting Scheme dated 31.01.2012 and No Objection Certificate for height clearance dated 20.07.2010 have been annexed as Annexure- R6,R7,R8 and R9 respectively in reply.
16. However, due to some personal grievances of landowners/collaborators which continued for about 1.5 years, the development of the project could not progress as per its schedule and in terms of allotment.
17. That meanwhile, the Real Estate (Development and Regulation) Act, 2016 was enacted and subsequently the Haryana Real Estate (Regulation and Development) Rules, 2017 came into force and respondent had immediately applied for registration of the tower T-4/ESSENZA vide Registration No.203 of 2017 dated 15.09.2017. The completion date for tower T-4/ESSENZA was declared as 14.09.2022 and the construction of the unit of complainant was expected to be



completed soon. True copy of Registration Certificate dated 15.09.2017 has been annexed as Annexure- R14 in reply file.

18. That the legal notice was duly replied and the complainant was called upon for clarification and resolution of grievances amicably.
19. That despite being faced hurdles on various counts which were beyond control of the respondent, the respondent took all possible efforts and completed the structure of tower i.e., more than 62% work of tower in which the units in question is situated has already been completed and the remaining construction work such as finishing and services works are in progress which they expected to be completed soon.
20. That on completion and grant of occupation, possession of unit will be offered and be delivered on remittance of balance consideration and completion of requisite formalities by complainant.
21. That the complainant has been entitled to get compensation on account of delay in completion of unit at specified rate which was agreed to be determined at the time of execution of conveyance deed as stipulated in Clause 18 of the agreement and the parties are bound by the same.
22. That the respondent had already incurred on the construction more funds than the amount realized from the allottees. Further, respondent has also introduced huge funds to meet out the cost of construction of the tower in which the unit of complainant is situated. Thus, the complainant does not deserve for refund of amount paid by him



towards consideration of the said unit and in such circumstances, the complaint deserves to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

23. During oral arguments learned counsel for the complainant and respondent reiterated arguments as stated in their pleadings. In addition to their written submissions ld. counsel for complainants stated that their allotted apartments in Tower Oxy-4 and Oxy 5 and now known as tower 4 and 5 are not being constructed and is far from completion therefore, they are seeking refund of the money paid by each them along with interest.

In response to above contentions, Ld. Counsel for respondent Ms. Manpreet Khurana stated that they have got this project registered with this Authority. Tower No. 4 and 5 have been included in the registration certificate vide registration No. 203 of 2017 and 204 of 2017 respectively. Respondents had shown 14.09.2022 as the date of completion of the tower-4 and 14.09.2021 as a date of completion of the tower-5 of the project. However, on account of pandemic extension has been allowed for completion of said towers i.e., 14.06.2023 for tower-4 and 14.06.2022 for tower-5 respectively.

She further stated that construction of Tower No- 4 and 5 is almost complete within the revised date of completion of the project



mentioned in the declaration format the time of registration of said towers of the project after grant of extension period on account of pandemic and application for grant of occupation certificate for Tower No. 4 and 5 has already been filed on 05.08.2022. Thereafter, an offer for fit out possession has also been made to complainants vide letter dated 10.10.2022. Thus, respondents will handover the possession of the allotted units to the complainants after obtaining occupation certificate from the authority concerned.

On the other hand, Id. Counsel for complainants argued that there has already been an inordinate delay in handing over of the possession by respondent. It was contended by Id. Counsel for complainants that this Authority has been awarding payment of upfront delay interest along with monthly interest in all those cases where there has been inordinate delay in handing over of the possession and thus requested the Authority to direct the respondent to pay monthly interest for the delay being caused in handing over possession under section 18 of RERA, Act which provides for interest for every month of delay, till handing over of the possession.

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

24. Perusal of case file reveals that initially the bunch of ten complaints i.e.,438/2018,439/2018,440/2018,441/2018,442/2018,499/2018,518/2018,958/2018,959/2018, 999/2018 filed in the year 2018 were heard



together by the Authority with complaint no.438/2018 as lead case since nature and facts of these complaints were identical wherein complainants had sought the relief of refund of the money paid by them along with interest from the Authority as the respondent has failed to handover the possession of the allotted units on the date stipulated in the agreement executed between the parties.

However, Authority in its order dated 13.03.2019 had observed that there is a potential of completion of project, and thus Authority deemed it appropriate to not to dispose of matters till the completion of the project and decided to **monitor** the progress of the project every month for completion of the project. The relevant part of order dated **13.03.2019** has been reproduced below for ready reference:-

The Authority observes that the respondents are in the process of mobilising financial resources, manpower and machinery for commencing the construction work of the project. They have already submitted timelines for achieving various milestones. Funds also have been arranged, and contract for carrying out the civil work has been awarded. Now the Authority will monitor their progress every month. If the respondents are found to be defaulting at any stage suitable corrective action will be taken. The Authority will not dispose this matter till completion of the project.

Thereafter, in order to prevent multiplicity of orders having similar directions and to strengthen their execution by one detailed order, the complaints 439/2018, 440/2018, 441/2018, 442/2018, 499/2018, 518/2018



,958/2018, 959/2018, 999/2018 were disposed of vide order dated 13.03.2019 as having been **merged** with Complaint No.438 of 2018 Ritu Nanda v/s RPS Infrastructure which was retained by the Authority for monitoring the progress of respondent for completion of the project. The relevant part of order dated 13.03.2019 has been reproduced below for ready reference:-

In order to avoid unnecessary logistical work, complaint no.'s 439/2018,440/2018,441/2018,442/2018,499/2018, 518/2018,958/2018, 959/2018, 999/2018 are hereby disposed of as having been merged with Complaint No.438of 2018 Ritu Nanda V/S RPS Infrastructure. The Complaint No. 438 of 2018 will be listed for hearing by this Authority every month. On the next date upto date progress achieved by the respondents shall be placed before the Authority. The respondents are also directed to hold monthly meeting with all the allottees of the project, including the complainants, and apprise them of the progress of construction milestones. To observe that whether construction work has commenced in right earnest, the site of the project shall be inspected by a representative deputed by the Authority. The Law Associate concerned shall separately seek orders of the Authority for appointment of a representative who will visit the site on 16.4.2019. All the captioned nine complaintnos.438,439,440,441,442,518,958,959,999,499 of 2018 are hereby disposed of and the proceedings of each of the complaint carried out so far stands subsumed into Complaint no 438/2018.

Later on, complaint no's 787 of 2020 and 182 of 2022 having identical facts and grievances were also subsumed by Authority into the lead complaint no. 438 of 2028 vide orders dated 03.11.2020 and 26.07.2022 respectively.



25. Authority has duly considered the aforesaid contentions of both the parties. Authority observed that though initially complainants had sought a relief of refund along with interest, but thereafter they agreed to monitor the progress of respondent for completion of the project and had also insisted for delay possession interest, which showed their intention to continue with the project. Today, the orders are passed by taking the leading case of Complaint No. 438/2018 titled as '*M/s Ritu Nanda Vs. M/s RPS Infrastructure Ltd*'. Further, as already mentioned in the written submissions, the respondent has raised various preliminary issues.

F.I Findings on objection raised by the respondent regarding territorial jurisdiction of the Authority.

26. Authority observes that 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 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 Faridabad, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

F.II Findings on objection regarding execution of BBA prior to the coming into force of RERA Act, 2016.



27. 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 and application of the Act is prospective, has also no force as the operation of the Act is retroactive in nature. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and 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, reference can be made to the case titled *M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357*, wherein the Hon'ble Apex Court has held as under:-

"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect



over the retrospective applicability of the Act, even on facts of this case."

"45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing interests of allottees, promoters, real estate agents in the its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc, issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under



Section 3 to prospectively follow the mandate of the Act 2016."

28. The same legal position was laid down by the Division Bench of the Hon'ble Bombay High Court in *Neel Kamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India and others 2018(1) RCR (Civil) 298 (DB)*, wherein it was laid down as under: -

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g), it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the rights so conferred would have been an absolute one."

As per the aforesaid ratio of law, the provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the



Rules became applicable. Hence, it cannot be stated that the provisions of the Act and Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

F.III Findings on objections raised by the respondent that matter be referred to an Arbitrator as per agreement.

29. The respondents have raised an objection for not invoking arbitration proceedings as per the provisions of office space buyer's agreement which contains a provision regarding initiation of arbitration proceedings in case of breach of agreement. The relevant Clause No.51 of the Buyer's Agreement dated 18.03.2013 w.r.t arbitration is reproduced herein below:

"That any disputes arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled amicably by mutual discussions failing which the same shall be referred for Arbitration. The sole Arbitrator shall be appointed by the intending seller whose decision shall be final and binding upon the parties. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 and the Venue shall be at an appropriate location at New Delhi or Faridabad. However, the Courts at District Faridabad alone shall have the exclusive jurisdiction."



The Authority is of the opinion that the jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Section 88 of the Act also provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506* and followed in case of *Aftab Singh and Ors. vs. Emaar MGF Land Ltd and Ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently, the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the Authority.



While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view.

Therefore, in view of the above judgments and considering the provision of the Act, the Authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act, 1986 and Act of 2016 instead of going in for an arbitration. Hence, the Authority has no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above mentioned reasons, the Authority is of the view that the objections of the respondent stands rejected that the present complaints are very much maintainable before this Authority.



F.IV Findings on objections raised by the respondent with respect to the deemed date of possession.

30. Respondent contended that they had declared that the construction of towers of their project wherein units of complainants are situated i.e., T-4 and T-5 would be completed by 14.09.2022 and 14.09.2021 respectively. The said dates had been declared under Section 4(2)(1)(C) at the time of the registration of the towers T-4 and T-5 of their project with this Authority vide registration No. 203 of 2017 and 204 of 2017 respectively which were thereafter extended to 14.06.2023 for tower T-4 and 14.06.2022 for tower T-5 due to covid situation. Therefore, deemed date for completion of said towers of project are 14.06.2023 for tower T-4 and 14.06.2022 for tower T-5 respectively. It was stated by the respondent that now construction is almost complete and they have applied for occupation certificate on 05.08.2022. Thus, it was contended that the promoter is entitled to provide/declare a revised date of completion of the project in the declaration form at the time of registration of the project.
31. Authority is unable to subscribe itself to these contentions. The declaration for the completion of the project under Section 4(2)(1)(C) of the Act is given unilaterally by the promoter to the Authority at the time of getting the real estate project registered. The allottee had no opportunity to raise any objection at that stage, so this unilateral Act



of mentioning the date of completion of project by the builder will not abrogate the rights of the allottee under the agreements for sale entered into between the parties. The Division Bench of the Hon'ble Bombay High Court in case *Neel Kamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India and others (Supra)* has laid down as under:

"Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(l)(C) enables the promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh timeline under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale."

The Hon'ble Bombay High Court by taking note of the provisions of Section 4(2)(l)(C) of the Act has categorically laid down that the provisions of the Act will not re-write the clause of completion or handing over of the possession mentioned in the agreement for sale. The fresh timeline independent of the time stipulated in the agreement is given in order to save the developer from the penal consequences but he is not absolved of the liability under agreement for sale. Thus, the respondent/builder was required to offer the possession of the unit to the complainant/allottee as per the terms and conditions of the



agreements, failing which the complainant/allottee will be entitled to claim the remedies as provided under section 18 of the Act.

Also, in case *M/s Imperia Structures Ltd. and others vs. Anil Patni and others*, Law Finder DocId#1758728, the Hon'ble Apex Court has laid down as under:

31. We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the Complainants in 2011-2012 and the Builder buyer Agreements were entered into in November, 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. Condition no. (x) of the letter dated 17.11.2017 also entitles an allottee in same fashion. Therefore, the entitlement of the complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission.

Thus, as per the ratio of law laid down in the cases referred above, the revised date of completion of the project mentioned in the declaration form under Section 4(2)(I)(C) of the Act will not extend the date of delivery of possession as mentioned in the buyer's agreement.

32. As per builder buyer agreement, deemed date of possession is 36 months from the date of the execution of agreement or from the date

of getting various sanctions from the concerned authorities, for starting the construction of the project, whichever is later. Clause 16 of builder buyer agreement executed between the parties stated as follows:

"the Intending Seller shall endeavour to offer the possession of the Unit to the Intending Buyer within a period of 36 months from the date of the execution of this Agreement or from the date of getting various sanctions from the Concerned Authorities, for starting the construction of the project, whichever is later, exclusive of the time taken by Competent Authorities towards various approvals such as issuance of the Occupation Certificates/Completion Certificates etc. with a reasonable extension of time. This is further subject to force majeure circumstances, or any other circumstances not anticipated and beyond the control of the Intending Seller and on timely receipt of all payments and other charges due/demanded being payable up to the date of offer of possession according to the payment plan opted by the Intending Buyer. The possession of unit shall be offered in raw/bare shell condition with exterior finish. After obtaining the possession of unit the Intending Buyer shall get the various jobs done at his own expenses, such as painting of walls/doors/windows, flooring, internal wiring, internal settings and install necessary fixtures and electrical accessories and do other works of internal decoration/interior designing in said unit in accordance with fit-Out Policy of said complex declared by Intending Seller from time to time, with prior written approval of Intending Seller."

Respondent has annexed the copies of various sanctions from the concerned authorities i.e., approval of Building Plans dated 02.09.2010, Environment Clearance dated 07.10.2009, Approval of Fire Fighting Scheme dated 31.01.2012 and No Objection Certificate



for height clearance dated 20.07.2010 in Annexure R6, R7,R8 and R9 respectively. In view of above, Authority observed that 36 months from the date of the execution of BBA comes out to be 18.03.2016 and 36 months from the date of getting various sanctions from the Concerned Authorities, for starting the construction of the project comes out to be 31.01.2015, out of these the later date will be considered as deemed date of possession in accordance with Clause 16 of builder buyer agreement and the later date comes out to be 18.03.2016. Thus, 18.03.2016 shall be deemed to be considered as due date of delivery of possession for awarding the relief in the present cases.

F.V Objections raised by the respondent regarding force majeure conditions.

33. The obligation to deliver possession within a time period stipulated in the builder buyer agreement was not fulfilled by respondent. There is a delay of more than 6 years on the part of the respondent. Respondent in its reply has only made plain averment that due to NGT order and covid outbreak etc., timely possession could not be offered to the complainants. In this regard, Authority observes that the deemed date of possession was 18.03.2016, whereas the NGT order referred by the respondent pertains to year 2019 i.e., post the lapse of due date. Further, respondent has not placed on record any orders by NGT to

show that for how many days the construction work was suspended before the due date of possession. Thus, the respondent who was failed to place on record any document to prove the force majeure condition before the due date of possession i.e., 18.03.2016 cannot be allowed to claim the benefit on account of its own delay/default. Further Authority observes that the reasons for delay due to NGT order are very general defence taken by almost all the builders without placing on record any specific order. Also, it is a very general fact that NGT orders prohibits/ bans construction activity only for couple of days during peak pollution season only (generally 10-15 days). Such orders by any strategic imagination cannot cause delay of possession of 6 years.

As far as delay in construction due to outbreak of Covid-19 is concerned **Hon'ble Delhi High Court** in case ruled as *MA Halliburton Offshore Services Inc. vs. Vedanta End & 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 September 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 March, 2016 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 an excuse for non-performance of contract for which deadline was much before the outbreak itself". So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

Observations of the Authority

34. In the light of the aforesaid findings, Authority is of the view that under the RERA Act, Authority has dual responsibilities, first to safeguard the interest of the allottees, and second, to promote growth and development of real estate sector in the State. Thus, before arriving at final conclusion, Authority has gone through all the facts, submissions of parties, photographs and status reports of the project submitted during the process of monitoring of the project.

On the basis of the facts, photographs and other submissions at the time of initial pleadings of the case, it was quite apparent that civil structure of the towers in question was complete and remaining



construction works were in progress. Respondents had also shown their seriousness towards completion of project by arranging huge funds for construction of project from L&T finance company apart from realizing payments from allottees and realizing the same in escrow account as per progress of the work. Respondent had approximately Rs. 98 crores available for development and completion of three towers i.e., T-3, T4 and T5 in December 2018 as stated in order dated 18.12.2018 and respondent had shown bonafide intention to complete the project soon by deploying contractors, labourers and machinery at site. Also, respondent at the time of the registration of the towers T-4 and T-5 of their project had declared that the construction of said towers would be completed by 14.09.2022 and 14.09.2021 respectively, which were thereafter extended to 14.06.2023 for tower T-4 and 14.06.2022 for tower T-5 due to covid situation.

It was stated by the respondent that construction is about to complete and they are putting all their efforts to complete the work and apply for occupation certificate at earliest. Respondents in other similar cases in respect to same project also stated that delay in construction was due to shortage of funds. They pleaded that if at this stage funds available with respondent are diverted for refund to allottees instead of completion of project, it will adversely affect



completion of project within stipulated time period and execution of such refund order will not be easy for respondents.

The complainants in these cases had prayed for refund of amount paid to the respondent for purchase of a unit in his project. However, the Authority, on the basis of the facts disclosed by way of pleadings and photographs produced by the respondent, found that there is a scope to have the project completed and such course will safeguard the interests of the allottees as well as the promoter. In this regard, Authority in its interim orders dated **18.12.18** has made the following observations:-

The Authority further observes that under the RERA Act it has dual responsibilities, first to safeguard the interest of the allottees, and second, to promote growth and development of real estate sector in the State. On the basis of the facts, photographs and other submissions, it is quite apparent that civil structure of the tower in question is complete. An additional investment of about Rs.54 crores is required for which the respondents have already arranged fund. If these funds are faithfully investment in the tower, the project can be completed by the stipulated date i.e. June, 2020. Allowing refund to the complainant may have a cascading effect and the entire project will be jeopardised and investments already made will go waste. The Authority is duty bound to strike a balance between the competing interests.

Thus, in such circumstances when respondents were in the process of mobilizing the financial resources, manpower and machinery at project site and when there are chances of completion of



project, Authority deemed it appropriate to not to dispose of matters till the completion of the project and decided to monitor the progress of the project every month for completion of the project. Authority vide its orders dated **13.03.2019** had subsumed all the similar complaints into complaint no. 438 of 2018 which was retained by the Authority for monitoring the progress of respondent for completion of the project along with a direction to respondent for holding monthly meeting of all the allottees for apprising them of the progress of achievement of construction milestones and to place of record progress report of the project. The Authority had also decided to get the project inspected by a local Commissioner from time to time.

In compliance, respondent had submitted status report in hearing dated 22.08.2019 stating that the superstructure of the project has already been completed. However, the said report had not shown any substantial progress in construction work nor they achieved the financial target set by the Authority with regard to construction work and completion of the buildings at site. However, they had completed their administrative exercise in allotment of different pending works relating to installation of electrification; fire fighting equipment's: installation of lifts; fixing of glass panels/glazing, finishing of interior of the buildings, flooring and wood work. At this, ld. counsel for complainants alleged that there they had no hope to get the project



completed with present pace of construction. The Authority after considering status report of project and hearing averments of both parties directed respondent to speed up the progress of construction work to achieve progress at site in terms of completion of various components at site by utilising of the finances. Further, directed the complainant to visit site of project on 14.09.2019 in order to find out whether the progress at site is going on for completion of remaining development and construction works. In compliance of said direction, complainant visited the site and learned counsel for complainants during the course of hearing dated 25.09.2019 while conceding that development work is in progress at the site has verbally **submitted that the complainants will feel satisfied if the possession of purchased flats is delivered to them at the earliest.**

The Authority, with a view to assess whether or not progress at site is going on had also appointed Mr.Arvind Mehtani, CTP, HRERA, Panchkula as local commissioner. As per the report submitted by him, no specific progress has been made so far as towers are concerned, where units of most of the complainants are situated, structure work, partition wall, glazing, plaster work on floors has been completed. He further summed that respondent has merely spent an amount of Rs 5.60 crores on completing the project in ten months from 08.02.2019 to 09.12.2019. On this, respondent has explained that



construction work was stopped due to the ban imposed by the Environmental Pollution (Prevention & Control) Authority (NCR) and referred photographs and annexure SR-1 with application filed for showing progress of construction, and submitted that the construction of the project is at full swing and is going as per the time schedule promised to the Authority. On this, Authority vide order dated **28.01.2020** observed as follows:-

*The Authority, after hearing both the parties, observes that **the respondent appears to be trying for completion of the project even though the progress is much slower.** They have arranged funds from different sources and have invested the same in the project from which it is evident that **the respondent is not shying away from work.** Expalnation of the respondent that due to orders of Hon'ble NGT, the work was stopped for about 2months is acceptable.*

Thus, Authority observed that the **respondent appears to be trying for completion of the project even though the progress is much slower.** Vide order dated 12.03.2020 Authority observed that though respondent is claiming for completion of the project on time but progress is much slower than the expectation of the allottees and Authority as well. They are definitely lagging behind time schedule of the construction work. Authority has tried hard to resolve various problems of the project and therefore, again directed the promoter to speed up his completion work by inventing more money and put



additional labour at the site at once in the interest of allottees. Thereafter, Ms. Apurva Singh, counsel for complainants in hearing dated 08.10.2020 had expressed her intention that the completion of project will safeguard the interests of the allottees as well as the promoter, the relevant part of order dated 08.10.2020 has been reproduced below:

'Ms. Apurva Singh, learned counsel for the complainant submits that initially complainant, earlier prayed for refund of amount paid to the respondent for purchase of a unit in his project, however, on the basis of the facts disclosed by pleadings and photographs produced by the respondent. Authority found that there was scope for completion of project, if it happens so than it will safeguard the interests of the allottees as well as the promoter.'

During the same hearing, respondent conceded that the project was to be completed in June 2020 but could not completed because of the restrictions imposed by the government due to pandemic. He requested the Authority to grant more time to complete as respondent promoter is trying hard to take all possible steps to complete the project at earliest. At this Authority also observed that progress on site is slower than the expectation of the allottees as well as Authority. He is again directed to provide a monthly schedule of physical work to be done on the project and money to be spent component wise. In the status report submitted by respondent as recorded in order dated



03.11.2020, the promoter has given 14.9.2022 as the date for completion of tower T-4 and 14.2.2021 the date of completion of tower T-5 in the application for registration of the project.

Respondent has further stated that adequate funds are available for completion of the towers as they have got the funding approved from M/S L&T Financial Services Ltd. The report of the Local Commissioner reproduced in order dated 03.11.2020 reveals that the progress at the site is very-very slow. It is stated by LC that construction could be completed by Sep 2022 as per completion date given in RERA registration if works takes place at a regular pace.

On the other hand the complainants are agitating and are apprehensive on account of the fact that the promoter is not investing adequate money in the project in fact they are making false promises, no work is going on at site. For that reason, **the complainants insist for delay possession interest as per Rule 15 of HRERA Rules, and requested the Authority to direct the respondent to pay monthly interest for the delay being caused in handing over possession under section 18 of RERA, Act which provides for interest for every month of delay, till handing over of the possession.** However, learned counsel for the respondent had opposed the grant of upfront interest as according to her, such recourse will jeopardize the further progress of the project. On this, Authority was of view that



withholding the relief of granting upfront interest on the ground that such recourse will jeopardize the progress of the project will only be permissible, if the respondent is serious in completion of the project. Authority had again appointed M/s Pro-tech Consortium, #153, Sector 13, Urban Estate, Kurukshetra as Local Commissioner in its orders dated 09.02.2022 to monitor progress of project. Perusal of the report of LC, it is found that construction work was going on at site but its pace was slow and in these circumstances it is not possible that project would be completed by March,2022.

35. Authority is of the view that though the speed of construction is at slow pace, nevertheless the project was neither abandoned nor standstill stage and there is a scope of completion of the project. Respondents are also putting full effort to complete construction work at the earliest. Further, pleadings and arguments of complainants as recorded in various interim orders of the Authority clearly indicate the intention of the complainants to continue with the project. Complainants have also filed an application dated 04.12.2021 praying for payment of upfront delay interest as per Rule 15 of HRERA Rules, 2017. The relevant part of such interim orders has been reproduced below for ready reference.

In hearing dated 09.02.2022, ld. counsel for complainants had argued:-



3. Complainants have filed an application dated 04.12.2021 praying for payment of upfront delay interest as per Rule 15 of HRERA Rules, 2017; Learned counsel for complainant Ms. Rupali Verma argued that this Authority has been awarding payment of upfront delay interest along with monthly interest in all those cases where there has been inordinate delay in handing over of the possession. Learned counsel argued that in this case deemed date of possession was 18.03.2016. Already delay of more than 5 years has been caused, as such complainants are entitled to get upfront delay interest and monthly interest till a valid offer of possession is made after obtaining occupation certificate...

4. The Authority is prime-facie of the view that upfront delay interest deserves to be allowed to each of the complainants.

Further, in hearing dated 30.03.2022, ld. counsel for complainants had argued:-

Rebutting submissions of respondent, Ms. Rupali Verma, Ld. counsel for the complainant argued that they have approached this Authority initially for refund but waiting for possession of booked unit. In all other similar placed cases, the Authority without any hesitation holds the respondent liable to pay upfront delay interest so the complainants-allotees in these cases cannot be declined upfront delay interest. Moreover, calculation sheet has also been filed in this regard. Mr. Munish Kumar Garg, Ld. counsel for complainant while agreeing to Rupali Verma submissions made by Ms. Rupali Verma has argued that construction work is not going on in full phase, in support he has placed photographs of the project. He has requested award upfront delay interest in favor of complainants so that atleast some relief be given to them who are waiting from 6-7 years to have possession of booked unit.



36. After hearing submissions of all parties and perusing relevant record, the Authority in its order dated 30.03.2022 observed that initially relief of refund was refused to the complainants on the ground that there was scope of completion of the project in question in case Authority resolves the disputes between allottees and promoters-respondent as project was neither abandoned nor standstill stage. But the speed of construction was at slow pace that is why project got delayed and directed respondent to place on record status report of project. Also in order dated 09.02.2022 it has already been observed that Authority prima facie was of view that upfront delay interest deserves to be allowed to complainants-allotees. However, submission of respondent that diversion of funds will affect the construction work at site is also a valid point to think upon **when complainants as well as Authority is inclined to get this project completed.** Further time is allowed to the respondent to complete the project with an expectation that respondent-promoter should come back with concrete report approaching towards stage of applying for occupation certificate.

Ld. Counsel for the respondent in compliance of directions of Authority dated 30.03.2022 has placed on record status report dated 16.08.2022 regarding completion of construction work of the project of respondent company namely RPS INFINIA'. While submitting



status report, it is mentioned that construction work of Tower no -4 and 5 has already completed, barring some finishing work. Photographs showing said towers have also been annexed as Annexure-R-3 (Colly) in status report. He further submitted that Occupation certificate has also already been applied with regard to Tower no- 4 and 5 on 05.08.2012. A copy of said application filed with DTCP, Haryana for grant of occupation certificate for Tower no- 4 and 5 has been annexed as Annexure-R-1 in status report. Possession of units in said towers will be offered on receipt of occupation certificate. It is also submitted further that **respondent has issued a credit note regarding delay interest to be paid to the complainants at the time of valid offer of possession after receiving occupation certificate.**

37. Factual position reveals that project of the respondent is almost complete and occupation certificate has already been applied with DTCP on 05.08.2022. In arguments respondent has stated that fit out possession has been made to allottees on completion of project and possession will be offered soon to the complainant after obtaining the occupation certificate.
38. In view of above, Authority has also referred to its judgment dated 12.08.2022 in similar complaint No.586 OF 2019 titled "*Nalini*



Khandelwal vs. RPS Infrastructure Limited (bunch of 5cases) reads as under:

4. After hearing both parties and perusal of record of the case, authority observes that since construction of project is almost complete, therefore respondents will handover a possession of the allotted unit to complainant after obtaining occupation certificate from the authority concerned. Further, Authority considers it appropriate to calculate upfront and monthly interest payable by respondents to complainant. Such upfront interest will be credited in favour of complainant in the statement of account to be issued by respondents at the time of handing over of possession. Interest shall be calculated as per SBI MCLR +2% which works out to 9.8% at the time of passing this order.

5. As per calculations verified by Accounts Branch of this Authority, the amount of delay interest payable by respondent upto the date of passing of order, and further, monthly interest payable till the date of legally valid offer of possession to each of the complainants is shown in the table below. This delay interest has been calculated on the amount in respect of which documentary evidence has been placed on record by complainant.

39. In furtherance of aforementioned observations, it is prudent to observe that the complainant who has been waiting for more than 6 years to have possession of booked unit should not suffer any more on account of lapse and default on part of respondent. Hence, he is very much entitled to be paid upfront interest for the delay caused in completion of the project by the respondent promoter from the deemed date of possession till handing over of the possession that too after receipt of occupation certificate further in terms of principles laid down by the



Authority in *Complaint No. 113/2018 Madhu SareenVs BPTP Pvt. Ltd.* Authority is of the considered opinion that the delay possession interest is to be paid to the **complainant-allottee** by the respondent-promoter on the total amount paid by him to the respondent-promoter in terms of *Appeal No. 619 of 2021 titled as Parminder Singh Sohal Vs. BPTP Ltd.*

40. Respondent however, will be entitled to claim balance consideration amount, if any, against any complainant-allottee. Further, if any delay interest is being imposed by the respondents on account of delay payment by allottees that should be calculated as per provision under Rule 15 of the HRERA Rules, 2017.
41. The provision of delayed possession charges has been provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

*.....
Provided that where an allottee 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 the possession, at such rate as may be prescribed.*

Thus, Proviso to Section 18 provides that where an allottee 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 and it 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".

42. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the HRERA Rules, 2017 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.
43. 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. 20.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
44. 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;

45. Authority has got delay interest calculated from its account branch.

The details of amounts paid by the complainants and delay interest calculated on said amounts are shown in the following table:

Complaint No.	Name of complainant	Unit No.	Date of BBA	Deemed Date of Possession	Amount Paid (Rs.)	Rate of Interest (%)	Delay Interest (Rs.)	Monthly Interest (Rs.)
438/2018	Ritu Nanda	Oxy-04-0102	18/03/2013	18/03/2016 (36m-CI-16)	4,58,07,636/-	10.75	3,60,85,382/-	4,18,230/-
439/2018	Ritu Nanda	Oxy-04-0101	18/03/2013	18/03/2016 (36m-CI-16)	4,26,96,579/-	10.75	3,36,34,529/-	3,89,826/-
440/2018	Ritu Nanda Insurance	Oxy-04-0422	18/03/2013	18/03/2016 (36m-CI-16)	1,09,74,524/-	10.75	86,45,267/-	1,00,192.-
441/2018	Nitasha Nanda	Oxy-04-0103	18/03/2013	18/03/2016 (36m-CI-16)	1,85,16,153/-	10.75	1,45,86,221/-	1,69,055/-
442/2018	PawanBhalla	Oxy-04-0104	18/03/2013	18/03/2016 (36m-CI-16)	1,45,30,775/-	10.75	1,14,73,639/-	1,32,668/-
499/2018	Rahul Goyal	T-04-0804	24/09/2013	24/09/2017 (48m-CI-22)	59,44,325/-	10.75	37,22,043/-	54,273/-
518/2018	Anita Sharma	T-05-0638	16/02/2011	16/02/2014 (36m-CI-16)	27,01,724/-	10.75	26,57,443/-	24,667/-
958/2018	Ankit Saxena & Sharad Saxena	T-05-0601	23/05/2011	23/05/2014 (36m-CI-16)	27,16,666/-	10.75	26,23,795/-	24,804/-
959/2018	Sharad Saxena & AnkitSaxena	T-05-0602	12/05/2011	12/05/2014 (36m-CI-16)	27,16,666/-	10.75	26,28,859/-	24,804/-
999/2018	Cosmos Packaging Systems Pvt Ltd	Oxy-05-0802	22/07/2014	22/01/2018 (36m+6m-CI-18)	43,42,774/-	10.75	25,65,747/-	39,650/-
787/2020	DivyaAggarwal	T-05-0516	14/01/2012	14/01/2015 (36m-CI-16)	3195695/-	10.75	29,20,517/-	29,177/-

182/2022	Ashwani Mittal	T-05-0305	10/10/2012	10/10/2015 (36m-CI-16)	3798809/-	10.75	31,74,978/-	34,684/-
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46. Respondent is directed to make a lawful offer after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time.

47. At the time of filing of complaint, complainant has also prayed for certain reliefs vide relief clause no. i, ii and iii. However, complainant's counsel has neither argued nor pressed such reliefs during hearing/proceeding/arguments. Also, the same are not the part of the pleadings as well. Therefore, prayer in respect of said reliefs is hereby rejected.

48. Further, during the course of hearing, it has come before the notice of the Authority that respondent had mortgaged the whole project to L&T Finance company to complete the project. Thereafter, Id. Counsel for complainant stated that as of now, when the project is complete, L&T Finance company has the first charge in the project. On this, Authority observes that though respondent has mortgaged the whole project but it is still responsible as section 11(4)(h) of of the Real Estate (Regulation and Development) Act, 2016 and the charge created will not affect the rights of the allottees with respect to the allotted units. The provision of *Sec-11(4)(h)* which protects the rights of the allottees has been reproduced below which provides as follows:-



"11(4)(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;"

49. Also, the complainants are seeking compensation on account of harassment, mental agony and undue hardship caused to complainant on account of deficiency in service and unfair trade practices and compensation for the rent liability of premises since April 2016. Complainant is also seeking costs and litigation expenses. 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 Pvt. 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.



I. DIRECTIONS OF THE AUTHORITY

50. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to pay upfront delay interest as calculated above to the complainants towards delay caused in handing over the possession within 90 days of uploading of this order on web-portal of the Authority. Further, on the entire amount of delay interest, monthly interest as calculated above shall be payable by the respondent to the complainants upto the date of handing over of the possession after obtaining occupation certificate.

(ii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of possession offered to her.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.



(iv) The respondent shall not charge anything from the complainants which are not part of the agreement to sell.

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



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



.....
NADIM AKHTAR
[MEMBER]