HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2837 of 2019**
Date of filing:	**27.11.2019**
Date of first hearing:	**12.02.2020**
Date of decision:	**18.07.2023**

Mukesh Kumar Sharma
S/o J.K. Sharma
R/o H.No. A 115/2, Raju Park,
Devli, New Delhi-62 ...COMPLAINANT

VERSUS

Auric Homes Pvt. Ltd.
Regd. Office: A-43, Gharia Jharia Maria,
Lajpat Nagar-IV, New Delhi-110065

M/s Adore Realtech Pvt. Ltd.
Regd. Office: A-43, Gharia Jharia Maria,
Lajpat Nagar-IV, New Delhi-110065
Corporate Office: IF-22-26, Ozone Centre, Sector-12, Faridabad, Haryana.
(Corrected vide order dated 18.07.2023)

....RESPONDENT

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

Present: Ms.Navneet, ld. counsel for the complainant through VC.

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

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 27.11.2019 by complainant against respondent company namely 'M/s Auric Homes Pvt. Ltd' under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

During hearing proceedings, an application dated 04.07.2023 for amendment of name of respondent company from "Auric Homes Pvt. Ltd." to "M/s Adore Realtech Pvt. Ltd has been received. The application has been filed by ld. Counsel for complainant in compliance of orders dated 09.05.2023. On consideration of an application, a necessary correction in the name of the respondent was ordered to be made in the memo of the parties. Thereafter, the name of respondent company has

been changed from "Auric Homes Pvt. Ltd." to "M/s Adore Realtech Pvt. Ltd.

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	Happy Homes, Village Budena, Sector-86, Faridabad.
2.	Nature of the project	Affordable Group Housing Colony
3.	Name of the promoter	'M/s Adore Realtech Pvt. Ltd.' (earlier known as 'Auric Homes Pvt. Ltd.')
4.	RERA registered/not registered	Registered (Regd. No. 151 of 2017)
5.	Date of booking	06.09.2014
6.	Flat no.	605-tower G ,6th Floor
7.	Carpet Area	491.591sq.ft.
8.	Date of allotment	03.07.2015
9.	Date of flat buyer agreement(FBA)	30.07.2015

10.	Deemed date of possession	30.07.2019 (As per clause 5.1.1 of FBA) 5.1.1 Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Developer or any restraints / restrictions from any courts/ Authorities but subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of the Consideration and having complied with all provisions, formalities, documentations, etc., as prescribed by the Developer, the Developer proposes to offer the handing over the physical possession of the Flat to the Purchaser(s) within a period of forty eight [48] months from the Commencement Date.
11.	Basic sale price	₹20,16,364/-
12.	Amount paid by complainant	₹15,48,822/-
13.	Offer of possession	No offer

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. That the complainant had booked a flat measuring 491.591 sq. ft. in affordable Group Housing Colony of the respondent named **'Happy Homes', Village Budena, Sector-86, Faridabad** by paying a booking amount of Rs. 1,00,000/- vide cheque no. 000006 dated 06.09.2014.

4. That the complainant was allotted apartment bearing no. 605 in Tower G on 6th Floor admeasuring area 491.591 sq. Ft. in the said project of the respondent vide provisional allotment letter dated 03.07.2015 annexed as Annexure C-2.

5. Thereafter, a flat buyer agreement (hereinafter referred to as FBA) was executed between the parties on 30.07.2015annexed as Annexure C-3 with complaint file. As per the clause 5 of FBA, the assured time period of possession was 48 months from the commencement date of the project, therefore, the deemed date of handing over of possession was 30.07.2019 but the respondent had failed to complete and develop the said project within stipulated time period as per the said agreement.

6. That the respondent sent various demand letters for the remaining outstanding payments and the complainant paid the same as per demands without committing a single default. Total sales consideration for the unit was Rs. 20,93,237.74/- including EDC, IDC, IFMS, PLC, car parking charges and other statutory charges against which complainant has paid

Rs.15,48,822/- to respondent till May, 2018 as per the demands of the respondent and also acknowledged in his receipts as well. The copy of receipt sent by the respondent has been annexed as AnnexureC-4 with complaint file.

7. That the complainant made several requests to respondent to furnish information of the said project but even after paying approximately 72% of total sale consideration, respondent had not informed the complainant regarding status of the project. Further, respondent had arbitrarily sent demand letters for outstanding amount instead of completing the project within assured time period which is specifically violation of the RERA Act, 2016. Complainant was also threatened by respondent to cancel the said allotted unit in case of not paying the outstanding amount as per demand letters. Thus, complainant got depressed in all ways and faced difficulty mental/financial harassment as well. Hence, the present Complaint has been filed seeking refund of amount deposited along with interest thereupon.

C. RELIEF SOUGHT

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-

a. To give necessary directions to the respondents for return of the payment made in lieu of unit/apartment till date along with prescribed rate of

interest from the date of first payment execution of allotment letter till realization as per the provisions of Sec 18 and Sec 19(4) of the RE(R&D) Act, 2016.

b. To impose penalty upon the respondent as per the provisions of Section 60 of RE(R & D) Act for willful default committed by him.

c. To impose penalty upon the respondent as per the provisions of Section 61 of RE(R&D) Act for contravention of Sec. 12, 13, Sec.14 and Sec. 16 of RE(R&D) Act.

d. To direct the respondent to provide detailed account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, 2017

e. To issue directions to make liable every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RE(R&D) Act,2016 to be read with HRERA Rules, 2017.

f. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.

g. To issue direction to pay the cost of litigation.

h. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 27.07.2020 pleading therein:

9. That the present complaint is not maintainable as the flat buyer agreement was executed between the complainant and respondent on 30.07.2015,i.e., prior to coming into force of RERA. Thus, the present complaint cannot be adjudicated by applying the provisions of RERA Act 2016 and is liable to be dismissed.

10. That as per the judgment passed by the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in the matter titled as ***Sameer Mahawar Vs. MG Housing Pvt. Ltd. in Appeal No. 6 of 2018,*** the relief of Refund and compensation can only be granted by an Adjudicating Officer and therefore this Hon'ble Authority does not have the jurisdiction to entertain and adjudicate the present complaint. Hence, the present complaint is liable to be dismissed on this ground alone.

11. Respondent alleged that the complainant was guilty of non-complying with the binding terms and obligations of the terms of the flat buyer agreement dated 30.07.2015 which the complainant had undertaken to abide by and the complainant had delayed several instalments which were time linked and further failed to pay the outstanding instalments.

12. The project being an affordable group housing project conceived and developed under the Affordable Housing Policy 2013, therefore the respondent was obligated to complete the same in a time bound manner. Hence, the respondent had already completed the project and delivered the possession to its respective allottees after obtaining the occupation certificate dated 07.09.2018.Several allottees have already started residing in the project.

13. That the name of the respondent company has been changed to M/s Adore Realtech Pvt. Ltd. and therefore the title of complaint needed to be suitably amended.

14. That the flat was allotted under the terms and conditions of Affordable Housing Policy, 2013 and as per the terms of the Policy, the complainant was bound to pay the due instalments every quarter failing which the allotment was liable to be cancelled after publication in a newspaper by giving the details of the units who have defaulted in making the payment of due instalments and by giving last and final opportunity of 15 days' time to make the payment of outstanding instalments.

15. That the complainant had hidden the material facts from this Hon'ble Authority and he had failed to abide by the terms of the Affordable Housing Policy, 2013 as well as the flat buyer agreement dated 30.07.2015. The complainant concealed the fact that he had failed to pay

the outstanding instalments and further failed to acknowledge that he had received last and final opportunity letter dated 24.02.2018 (annexed as Annexure R-5) from the respondent. The complainant further failed to state that list of defaulting units was got published in the newspaper 'Hindustan Times' dated 23.02.2018, annexed as Annexure R-4.

16. That the complainant did not come forward to make the payment and the allotment of the complainant stood cancelled on the expiry of 15 days from the date of issuance of last and final notice dated 24.02.2018, i.e., after serving several reminders including publication in the newspaper as required under the terms of the Affordable Housing Policy, 2013 and FBA. The relevant Clause 6.1 of FBA read as under:

> *"The timely payment of each instalment (As mentioned in Annexure -C) of the Consideration i.e. Allotment Price and Charges as stated herein is the essence of this transaction/Agreement. In case payment of any instalment as may be specified is delayed, then the Purchaser(s) shall pay interest on the amount due at the Interest Rate. However, if the Purchaser(s) neglects, omits ignores, or fails for any reason whatsoever to pay in time to the Developer any of the instalments or other amounts and charges due and payable by the Purchaser(s) a reminder may be issued to him for depositing the due instalments within 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than then thousand in the state for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs. 25000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant.*

Such flats may be considered by the committee for offer to those applicants falling in the waiting list"

17. That all the publications were sent by the respondent to the complainant at the last known address through speed post/courier the receipts of which are annexed herewith and the same were duly received by the complainant.

18. That the respondent cannot be held guilty for the delay in offering the refund to the complainant as the complainant never claimed the refund from the respondent prior to filing of the present complaint nor issued any legal notice or any letter seeking refund against the cancelation of the allotment.

19. That the respondent cannot be held liable to the pay interest to the complainant on the amount of refund as the complainant cannot take the benefits of its wrong and delays and laches and the grant of interest from the date of cancellation till date will only burden the respondent for no fault on its part.

20. That the respondent was ready and willing to make the refund and is still ready and willing to make the refund of the amount deposited after the deduction of the Earnest Money, Taxes and Interest which amounts to Rs. 14,48,111/-. Further, vide affidavit dated 16.05.2023, respondent alleged that the amount of Rs. 10,082/- in the computer generated statement of

account as annexed on page 47 Annexure C4 of the complaint file was never paid by the complainant and was without any verification by the respondent company and, therefore, the same cannot be taken to represent the true and correct picture of the statement of account of the allottee.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

21. During oral arguments learned counsel for the complainant and respondent reiterated their respective arguments as stated in their written submissions. Learned counsel for complainant and respondent in addition to their written submissions has submitted oral arguments as follows:-

Ms. Navneet, ld. Counsel for the complainant submitted before the Authority that case of the complainant is that he booked a unit in the project of respondent namely "Happy Homes" by making a payment of Rs. 1,00,000/- on 06.09.2014. Vide allotment letter dated 03.07.2015 respondent provisionally allotted Flat no. 605 in Tower G on 6th floor admeasuring area 491.591 sq. ft. to the complainant. Flat buyer agreement was executed on 30.07.2015. As per clause 5 of FBA possession of the unit was to be handed over within 48 months from the date of FBA, therefore, the deemed date of handing over of possession 30.07.2019. Total sales consideration for the unit was Rs. 20,93,237.74/-

including EDC, IDC, IFMS, PLC, car parking charges and other statutory charges against which complainant has paid Rs.15,48,822/- to respondent till May, 2018. In 2016 complainant several times inquired regarding the status of the project but respondent did not clearly respond to the queries of complainant. Even after paying approximately 72% of total sale consideration, respondent has not informed the complainant regarding status of the project and of his unit. Therefore, complainant is pressing for refund of paid amount alongwith interest.

Mr. Rohan Gupta, Id. Counsel for respondent submitted that complainant defaulted in making payments despite several reminders. Installment of Rs. 2,52,046/- with due date 25.11.2016 was paid on 06.03.2017 i.e., after a delay of 3 months and 11 days. Thereafter, demand of Rs. 2,82,291/- was raised by respondent promoter, with due date being 25.11.2017. However, complainant again defaulted in making the payment. Also, reminder letter dated 02.12.2017 was sent to complainant, but complainant still defaulted in making the payment. Therefore, respondent promoter cancelled the unit after making a publication in the newspaper, "Hindustan" on 23.02.2018 with a list of defaulters. He further submitted that cancellation of unit was done within the confines of the Affordable Housing Policy, 2013 which provides that if within 15 days of the publication, complainant does not make the

payment, his unit will stand cancelled. He further apprised the Authority that respondent-promoter received occupation certificate 07.09.2018, even before the deemed date of possession expired, i.e. on 30.07.2019. Respondent-promoter did not offer the unit to the complainant as his unit already stood cancelled.

Rebutting the contentions of the respondent, Ms. Navneet, Id counsel for complainant submitted that neither they have received any cancellation letter, nor has any refund been initiated by the respondent promoter. Instead, respondent promoter has been utilizing the money paid by complainant till date for his own benefits.

In response to this, Ld. Counsel for respondent submitted that complainants never approached the respondent promoter for refund of amount paid by the complainant. However, he is ready and willing to refund the amount paid by complainant after deduction of earnest money, as per the Affordable Housing Policy, 2013.

F. ISSUES FOR ADJUDICATION

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

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

The Authority has gone through the contentions of both the parties. In light of the background of the matter as raptured in this order and also the arguments submitted by the parties, Authority observes as follows:

23. One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondent 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 save the provisions of the agreements made between the buyers and seller."*

Further, as per recent judgement of Hon'ble Supreme court in ***Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021*** it has already been held that the projects in which completion certificate has not been granted by the competent Authority prior to coming into force of RERA Act, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(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.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the

parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest or refund alongwith interest at prescribed rate u/s 18(1) of RERA Act.

24. It has been pleaded by respondent that as per the judgment passed by the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in the matter titled as ***Sameer Mahawar Vs. MG Housing Pvt. Ltd. in Appeal no. 6 of 2018,*** the present complaint is not maintainable before this Authority as the adjudicating powers to decide the relief of refund and compensation only vests with the Adjudicating Officer and consequently this Authority cannot adjudicate this complaint without jurisdiction.

However, this issue regarding jurisdiction has been set at rest by the Hon'ble Apex Court with its authoritative pronouncement in case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP &Ors. Etc. 2022(1) R.C.R. (Civil) 357,*** wherein the Hon'ble Court has laid down as under:-

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that* ***when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or***

penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint*. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 readwith Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, when there is a dispute with respect to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority, which has the power to examine and determine the outcome of the complaint. The present complaint has been filed by complainant for grant of refund along with interest. So, this Authority is fully competent to entertain and decide the complaint. Hence, objection raised by the respondent regarding jurisdiction of this Authority to entertain the claim of the complainant is rejected.

25. There is no dispute between the parties with regard to the facts that that the complainant had booked a unit in the project of the respondent namely "Happy Homes" by making a payment of Rs. 1,00,000/- on 06.09.2014 to the respondent. Thereafter, a flat no. 605 in Tower G on

6th floor admeasuring area 491.591 sq. ft. was allotted to complainant vide allotment letter dated 03.07.2015. Flat buyer agreement was executed between both the parties on 30.07.2015. Deemed date of handing over of possession was 30.07.2019 as per clause 5 of FBA has also been admitted by the respondent.

Further, it has been stated by the respondent that the total sales consideration of the unit was of Rs.20,16,364/-(excluding other charges and taxes) as mentioned in flat buyer agreement dated 30.07.2015 and not of Rs. 20,93,237.74/- including EDC, IDC, IFMS, PLC, car parking charges and other statutory charges as there is no car parking available in the project being it an affordable group housing project, against which the complainant had only paid Rs. 15,38,740/-.

26. The respondent has denied the fact that the payment of Rs. 15,48,822/- was made till 04.05.2018. Respondent in its reply has stated that the payment of Rs.15,38,740/- was made by the complainant till 23.05.2017 and an alleged amount of Rs. 10,082/- at page 47 Annexure C4 to the complaint file was never paid by the complainant. An affidavit dated 16.05.2023 was also filed by respondent stating that the amount of Rs. 10,082/- in the computer generated statement of account as annexed at page 47 Annexure C4 to the complaint file was never paid by the complainant through any banking channels or cash to the respondent company and the same is only a credit given on account of refund of GST

amount made to the allottees of the project in accordance with the provisions of GST Act and Rules. Respondent in its reply has further stated that the complainant had not made any statement on oath or otherwise in his complaint regarding the payment of the aforesaid amount to the respondent company, therefore the same cannot be taken to represent the true and correct picture of the statement of account of the allottee.

27. In this regard, on perusal of documents available on record Authority observes that the statement of account annexed by the complainant at page 47 Annexure C4 of the complaint file is a custom ledger of respondent being generated electronically showing the internal accounting of the respondent. The said statement of account is a computer generated statement wherein an auto credit of Rs. 10,082/- has been shown, however, there is no entry that reflects that the said payment of Rs. 10,082/- is made by the complainant.

Authority further observes that the complainant has failed to place on record any demand letter issued by respondent for payment of Rs. 10,082/- or any bank statement or cheque or UTR no. in proof of making the payment of the amount of Rs. 10,082/- on 04.05.2018 to the respondent company. Moreover, complainant himself has admitted in its application dated 27.04.2023 filed for recalling of interim order dated 09.02.2023 that a credit of Rs. 10,082/- after serving of another

notice/threat of cancellation on 24.02.2018 had been given by the respondent on 04.05.2018. The fact that the respondent raised no demand after the final notice dated 24.02.2018 shows that the respondent had no intention to continue with the builder-buyer agreement. It appears that since the respondent had not refund the amount to the complainant, therefore, the accounts of the complainant were not closed / settled and therefore, the auto-credit was made in his account. In view of said observations, **auto credit of Rs. 10,082/- cannot be considered as payment of amount by the complainant towards total sales consideration of the unit** as the same was never demanded by respondent from the complainant.

28. Further, respondent has contended that the cancellation of the unit of the complainant was made after making a publication in the newspaper, "Hindustan" on 23.02.2018 along with a list of defaulters who had defaulted in making the payment. The said cancellation was done in accordance with Affordable Housing Policy, 2013 which provides that if within 15 days of the publication, complainant does not make the payment, his unit may be cancelled and in such case the promoter may deduct Rs. 25,000/- and refund the balance amount ~~amount~~ deposited. However, it is the case of the complainant that neither complainant has received any cancellation letter, nor has any refund been initiated by the respondent promoter. Instead, respondent-promoter has been utilizing the

money paid by complainant till date for his own benefits. Further, in an application dated 27.04.2023, complainant has stated that the respondent, till date, had never cancelled the unit in question and the notices annexed with the reply are merely demand notices for payment and not the cancellation. Therefore, the deduction of Rs. 25,000/- out of amount payable to the complainant is also not tenable. It has also been stated that the respondent had taken and acknowledged the payment made by the complainant on 23.05.2017 i.e. after serving of notice/threat of cancellation by the respondent on 23.02.2017. Moreover credit of Rs. 10,082/- on 04.05.2018 after serving of another notice/threat of cancellation on 24.02.2018 had been given by the respondent on 04.05.2018, as is credence from page no. 47 of the complaint, that construes that the allotment of unit in question had not been cancelled by the respondent, till date.

29. Before adjudicating the same, Authority has gone through termination, cancellation and forfeiture clause of FBA (Clause 6.1), which has been reproduced below for ready reference:

> *6.1 The timely payment of each instalment (As mentioned in Annexure-C) of the Consideration i.e. Allotment Price and Charges as stated herein is the essence of this transaction/Agreement. In case payment of any instalment as may be specified is delayed, then the Purchaser(s) shall pay interest on the amount due at the Interest Rate. However, if the Purchaser(s) neglects, omits, ignores, or fails for any reason whatsoever to pay in time to the Developer any of the instalments or other amounts and charges due and payable*

by the Purchaser(s),a reminder may be issued to him for depositing the due instalments within 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the state for payment of due amount within 15 days from the date of publication of such notice, failing which allotment ***may*** *be cancelled. In such cases also an amount of Rs 25000/-****may*** *be deducted by the coloniser and the balance amount* ***shall*** *be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list.*

On perusal of letter/notice dated 23.02.2017 issued by respondent, it is observed that last and final opportunity was given to complainant to make the payment of the outstanding dues within 15 days of this letter/notice, failing which allotment of complainant will be cancelled. However, complainant on failure on part of the complainant to pay the outstanding dues, respondent had made a publication in the newspaper, **"Hindustan" dated 23.02.2018** with a list of defaulters who had defaulted in making the payment in spite of notice issued to them after 15 days from the date of demand. On perusal of the notice in the newspaper, it is observed that a list of 44 allottees who have defaulted in making payment was published. The unit of the complainant G-605 is mentioned at serial no. 2 of the said list of defaulting allottees. It was stated in the publication that the applicants may deposit their installment along with applicable interest on or before 05th March, 2018, failing which their allotment shall be cancelled without any further notice and the amount deposited by them to

the respondent will be refunded after making deductions as per Affordable Housing Policy, 2013.

However, the complainant has failed to place on record any document to show that he paid the amount due towards him within the timeframe as stipulated in the published notice i.e., within 15 days from the date of publication. Now, an allotment may be cancelled on default of making payment within time stipulated in the notice in the newspaper, meaning thereby that the respondent had the discretion to cancel the allotment or to still continue with it. In cases where respondent chooses to cancel the allotment on account of default by complainant in making timely payment, respondent is under obligation to refund the deposited amount after deducting Rs. 25,000/- to the complainant as per the term '***shall***' mentioned in the said clause of FBA. But in present case, respondent had never refunded any amount to complainant. Rather, respondent had again issued a letter/notice dated 24.02.2018 titled as *LAST AND FINAL NOTICE FOR MAKING THE OUTSTANDING PAYMENT,* **seeking payment of outstanding dues from the complainant till 05-03-2018 failing which his allotment stands cancelled.** The complainant in his complaint and during the course of hearing has not denied the receiving of notice dated 28.02.2018. Infact, the complainant had pleaded that the said notice was only a demand letter and not a cancellation letter and since the respondent had not served any

letter with specific subject 'cancellation of unit', cancellation so done is illegal and arbitrary. On perusal of the notice dated 28.02.2018, it is apparent that the respondent had clearly communicated to the complainant to pay the outstanding dues, failing which the allotment stands cancelled. The very act that the complainant did not make any payment after receiving the said notice, invoked the cancellation provisions as mentioned in the notice. The respondent vide said notice had made his intentions very clear that if the complainant does not pay the outstanding dues within a stipulated time, it shall automatically stands cancelled. Therefore, the plea of the complainant that no separate cancellation was served upon him is not tenable. The notice dated 28.02.2018 was sufficient enough to convey cancellation. Complainant was very much aware that in case he does not make the payment of the amount due, the unit stands cancelled. There appears no ambiguity in the language of the letter dated 28.02.2023, the same suffice as cancellation letter.

31. Authority is of the view that in cases of cancellation of allotment by respondent-promoter as per the Affordable Housing Policy, 2013, respondent-promoter is under an obligation to refund the entire amount paid by allottee after making deduction of Rs. 25,000/- as per Policy, 2013. In this present case, though the cancellation was done as per policy

of 2013, however, respondent-promoter has failed to initiate the refund proceedings of amount already deposited by the allottee after permissible deductions on cancellation of allotment as per the Affordable Housing Policy, 2013.

32. Therefore, Authority directs the respondent-promoter to refund the amount of Rs.15,38,740/- paid by complainant along with interest in terms of RERA Act,2016 and HRERA Rules,2017 till date after making permissible deduction of Rs. 25,000/- as per Policy of 2013. Further, as per observations made by this Authority in Para 27 of this order, the credit of Rs. 10,082/- cannot be considered as payment of amount by the complainant towards total sales consideration of the unit.

33. As per Section 18 of RERA Act, 2016, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

> *"**Rule 15:** Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the*

promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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."

34. Consequently, as per website of the state Bank of India i.e. https://sbi.co.in, the marginal cost of lending rate (in short MCLR) as on date i.e.18.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75 %.

35. 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;

36. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of **Rs. 15,38,740/-** along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75 % (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount i.e., **Rs. 12,02,635/-**.Thus, Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order after deducting Rs. 25,000/- as per policy of 2013 and said amount works out to **Rs.27,16,375/-**. The details of the interest calculations have been provided in the table below:

S.No.	Principal Amount(₹)	Date of payment	RATE OF INTEREST (%)	INTEREST AMOUNT(₹)
1.	100000/-	2015-06-01	10.75	87473/-
2.	421735/-	2015-06-11	10.75	367660/-
3.	260867/-	2015-11-26	10.75	214511/-
4.	252046/-	2016-05-30	10.75	193450/-
5.	252045/-	2017-03-06	10.75	172665/-
6.	252047/-	2017-05-23	10.75	166876/-
TOTAL	**Rs. 15,38,740/-**			**12,02,635/-**

37. The complainant is seeking the direction to pay the cost of litigation. 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 PvL 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.

38. Complainant has sought criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code, for which he has remedy under the criminal law. Further, complainant's counsel has neither argued nor pressed upon relief no. b, c, d and e during hearing/proceeding/arguments. Hence, complainant prayer with respect to said reliefs is rejected.

39. Further, with respect to an application dated 27.04.2023 filed by complainant for recalling the orders dated 09.02.2023, Authority observed that the said order in question was an interim observation, and the application to recall said order has been considered while passing the final orders and thus the said recalling application is also hereby disposed of in the present case.

I. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent is directed to refund the entire amount of **Rs. 27, 16, 375/−**to the complainant which comes out after making permissible deduction of Rs. 25,000/- as per Policy of 2013 i.e.,(Rs. 27,41,375/- Rs. 25,000/-=Rs. 27,16,375/-).

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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

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Dr. GEETA RATHEE SINGH
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]