HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1936 of 2022**
Date of filing:	**30.08.2022**
Date of first hearing:	**19.10.2022**
Date of decision:	**12.07.2023**

Manoj Kumar Gupta S/o Sh. Jaibhagwan Aggarwal &
Sushma Aggarwal W/o Sh. Manoj Kumar Gupta &
Akshita Gupta D/o Sh. Manoj Kumar Gupta
All R/o House No. 205, New Swastik Apartments,
Sector-9,Rohini, New Delhi.

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT(S)

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

Present: - Mr. Rishi Kapoor, Counsel for the complainants through VC
Mr. Shubhnit Hans, Counsel for the respondent through VC.

Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint was filed on 30.08.2022 by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	TDI City, Kundli , Sonipat
2.	RERA registered/not registered	Not registered.
3.	DTCP License no.	183-228 of 2004, 153-157 of 2004 and 101-144 of 2005.
	Licensed Area	927 acres
4.	Unit no.(plot)	H-874

5	Unit area	350 sq. yds.
6.	Date of allotment	03.02.2009
7.	Date of builder buyer agreement	Not executed.
8.	Due date of offer of possession	Not available.
9.	Possession clause	Not available.
10.	Total sale consideration	₹ 22,92,500/-
11.	Amount paid by complainants	₹ 26,45,126/-
12.	Offer of possession	No offer.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that original allotee Ms. Babita booked a plot in in the project- TDI City, Kundli, Sonipat of the respondent in year 2005. Thereafter, second allotee Mr. Guljeet Singh Kapoor purchased allotment rights of plot in year 2008. Subsequently allotment rights were purchased by third allotee Joginder Singh in year 2010 and at last allotment rights were purchased by complainants on 29.06.2017. Allotment of plot no. H-874 having area 350 sq. yds. in respondent's project on 03.02.2009 in favor of original allotee Babita Chopra which got endorsed in favor of complainants on 29.06.2017.

4. As per the terms and conditions of the allotment letter and assurances of the respondent, the possession was to be provided by 19.12.2009

whereas fact remains that respondent has neither provided the possession of the unit nor developed the amenities in the project against which the payment has already been made. An amount of Rs 26,45,126/- has already been paid to the respondent which is admitted in statement of account annexed as Annexure-IV to complaint.

5. That after lapse of 13 years from deemed date of possession respondent has neither completed the said project nor the instant unit is anywhere near its completion. The unit had been bought with the intention to provide source of residence to the complainants family in the Haryana. However, due to incessant delay from the end of the respondent, the complainants were compelled to make alternative arrangements. The need for this unit elapsed and it has become a financial burden.

6. That the complainants are in much more need of money that is stuck with the respondent. Therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

7. Complainants in their complaint has sought following relief:

i. To provide the possession of the unit at the earliest and adjust the delay penalty accrued upon the unit because of the delay by the respondent company.

ii. Direct the respondent company to provide mental agony of Rs 10,00,000/-.

iii. Grant a sum of Rs 50,000/- as costs for this complaint to complainants.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.12.2022 pleading therein:

8. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- TDI City at Kundli, Sonipat, Haryana.

9. That when the respondent Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent Company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

10. That the project was completed way before the enactment of RERA Act and even the possession was offered before the enactment of RERA Act, the complainant cannot approach Ld. Authority for adjudication of its grievances. Agreement was executed on

17.03.2011, which is much prior from the date when the RERA Act came into existence.

11. That complainants herein as an investor have accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

12. That handing over of possession has always been tentative and subject to force majeure conditions and the respondent vide its letter dated 22.05.2019 and 18.08.2022 annexed as Annexure 4 to complaint has already expressed its inability to provide the originally allotted plot and offered an alternate plot at a better location. However, it is the complainants who have not come forward to accept the same.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

13. During oral arguments learned counsel for the complainants insisted upon possession of booked plot alongwith delay interest stating that respondent despite availing opportunities has not offered him a similarly placed alternative unit. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that plot no. J-630 and F-29 having area of 200 sq. yds. and 400 sq. yds. respectively were offered to complainants but complainants did not choose any plot out of them.

G. ISSUES FOR ADJUDICATION

14. Whether the complainants are entitled to possession of booked plot alongwith delay interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

(i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 03.02.2009 when the complainants were allotted plot no. H-874, TDI City, Kundli, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in ***Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.*** Relevant part is reproduced below for reference:-

> *"47. The legislative power to make the law with prospective/retrospective effect is well recognized and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.*

48. The distinction between retrospective and retroactive has been explained by this Court in ***Jay Mahakali Rolling Mills Vs. Union of India and Others****, which reads as under:-*

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

49. Further, this Court in ***Shanti Conductors Private Limited and Another Vs. Assam State Electricity Board and Others****, held as under:-*

"67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.

68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31-8-2016 [Shanti Conductors (P) Ltd. v. Assam SEB, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive."

50. In the recent judgment of this Court rendered in the case of ***Vineeta Sharma Vs. Rakesh Sharma and Others'*** *wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:-*

"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act."

51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

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 Authority under 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 on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

(ii) The objection of the respondent that the project in which the complainant is seeking possession is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have jurisdiction to entertain the present complaint. This issue that whether this Authority has jurisdiction entertain the present complaint as the project is not registered has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd**. Relevant part of said order is being reproduced below:

"Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of

Rathee

Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."

(iii) The respondent in its reply has contended that the complainants are "speculative buyers" who have invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore they are not entitled to the protection of the Act of 2016. In this regard, Authority observes that

"any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainants are an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:
(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(iv) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 03.02.2009, it is clear that complainants are an "allottee" as plot bearing no. H-874 in the real estate project "TDI, City, Kundli", Sonipat was allotted to them by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee"

and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled **as M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(v) Admittedly, complainants in this case had purchased the booking rights qua the floor in question in the project of the respondent in the year 2017 against which an amount of ₹26,45,126/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 3,05,375/- was made to respondent on 19.12.2009 by the erstwhile allotees which implies that respondent is in receipt of total paid amount of Rs 26,45,126/- since year 2009 whereas fact remains that no offer of possession of the booked plot has been made till date.

(vi) In the written statement submitted by the respondent, it has been admitted that possession of the booked floor has not

offered till date to the complainants. With respect to status of handing over of possession, it is submitted that the respondent vide letters dated 22.05.2019 and 18.08.2022 has already expressed its inability to provide possession of originally booked unit to the complainants and offered alternate plot to them at a better location but the complainants did not come forward to accept said offer. It is pertinent to mention here that no specific reason for the unavailability of booked plot has been detailed out either in the written statement or at the time of arguments. Respondent has not substantiated the plea of inability to provide the originally booked plot to complainants with relevant documentary evidence. Raising of plea without any documentary proof is not admissible. No latest photographs of the site or any other sort of justification as to what all factors are responsible for creating hindrance to not to offer possession of booked plot has not been placed on record. It has not been established that offer of booked plot is not possible due to some genuine reliable reason/circumstances. Respondent has pleaded that deemed date of possession was tentative and was subject to force majeure, however, no reason/factor attributed for causing delay in offer of possession has been specified in the written statement. Authority is of considered view that respondent has not only mentioned the word force majeure, not the specific

force majeure factors responsible for delay. Mere stating force majeure as a cause for delay in offering the possession is not sufficient to justify the delay caused. Further, it is not even in memory of general public pertaining to year 2009-2012 if any war, flood, pandemic, etc. occurred in region-Sonipat in which unit is located for causing delay. In regard to plea raised by the respondent that deemed date of handing over of possession was tentative, Authority observes that builder buyer agreement was not executed between the parties and unit was allotted to complainant on basis of allotment letter of year 2009. But the word tentative cannot be interpreted to be never ending. Complainant filed this complaint in year 2022 i.e. after lapse of 10 years from the reasonable period for deemed date of possession which should have been 3-4 years. Therefore, the respondent cannot take benefit of its own wrong for causing delay in offering of possession.

(vii) Authority observes that the builder buyer agreement has not been executed between the parties. In absence of execution of builder buyer agreement and no specific clause of deemed date of possession in allotment letter, it cannot rightly be ascertained as to when the possession of said floor was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has

referred to observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the floor was booked by the original allotee in the year 2005 and allotment letter was issued on 03.02.2009 by the respondent, accordingly, taking a period of 3 years from the date of allotment i.e 03.02.2012 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 03.02.2013. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(viii) Complainants are insisting upon possession of booked plot only as alternate plots offered by respondent are not similarly placed units in terms of size. Respondent who is in receipt of total amount of Rs 26,45,126/- since year 2009 has not even made sincere efforts to provide atleast reasonable number options of alternate plot to choose from. It is the respondent who has failed to develop the booked plot till date. However, no such circumstances has been specified in written statement/ oral arguments which can be relied upon to convince the Authority that physical possession

of the booked plot is actually not possible. For reference judgement dated 14.03.2005 passed by **Hon'ble Supreme Court in Appeal (civil) 6306-6316 of 2003 titled as Manager, R.B.I., Bangalore vs S. Mani & Ors.** is relied upon. Relevant part of the judgement is reproduced is follow:-

"The concerned workmen in their evidence did not specifically state that they had worked for 240 days. They merely contended in their affidavit that they are reiterating their stand in the claim petition. Pleadings are no substitute for proof. No workman, thus, took an oath to state that they had worked for 240 days. No document in support of the said plea was produced. It is, therefore not correct to contend that the plea raised by the Respondents herein that they have worked continuously for 240 days was deemed to have been admitted by applying the doctrine of non-traverse. It any event the contention of the Respondents having been denied and disputed, it was obligatory on the part of the Respondents to add new evidence. The contents raised in the letters of the Union dated 30th May, 1988 and 11th April, 1990 containing statements to the effect that the workmen had been working continuously for 240 days might not have been replied to, but the same is of no effect as by reason thereof, the allegations made therein cannot be said to have been proved particularly in view of the fact that the contents thereof were not proved by any witness. Only by reason of non-response to such letters, the contents thereof would not stand admitted. The Evidence Act does not say so.

In Range Forest Officer Vs. S.T. Hadimani [(2002) 3 SCC 25], it was stated: "3\005In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It

was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

(ix) In the present complaint, the complainants intend to continue with the project and are seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Though, the respondent had offered 2 alternate plots, the same are not acceptable to the complainants. The complainants cannot be forced to accept the possession alternate plot. Even in the prevailing situation, complainants have chosen to seek possession of the plot allotted to them and are insisting upon interest for delay in handing over of possession. 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".

(x) In the present case respondent company transferred booking rights in favour of complainants vide endorsement on 29.06.2017. The principal argument of the respondent is with regards to the rights of the subsequent allottee i.e the complainants who purchased a unit after being aware of the fact that the due date of possession has already expired and that the possession of the unit is delayed. Plot was transferred in the name of the complainants after expiry of due date of possession i.e 03.02.2012 (3 years from the date of allotment) and after coming into force of the RERA Act. First and foremost, it is worthwhile to understand the term allottee as per the RERA Act and whether subsequent allottee is also an allottee as per provisions of the Act?

The RERA Act 2016, provides the definition of the term "allottee" in Section 2 (d). The definition of the allottee as provided in the Act is reproduced as under:

"2 In this Act, unless the context otherwise requires-(d)

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, ***and includes the person who subsequently acquires the said allotment through*** *sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

The term "allottee" as defined in the Act also includes and means the subsequent allottee. An original allottee is a person to

whom an apartment, plot or building has been allotted or sold by the promoter. Thereafter, a person who acquires the said allotment of apartment, plot or building through sale, transfer or other wise and in whose name the transfer of rights has been endorsed by the promoter, becomes a subsequent allottee. From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that the act does not differentiate between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only remain for identification/ use by the promoter. Therefore, the Authority does not draw any difference between the allottee and subsequent allottee per

se. Therefore, subsequent allottee is entitled to all rights conferred upon him by original allottee, as per the buyer agreement.

(xi) The Authority observes that the respondent has severely misused its dominant position. Allotment of the plot was done on 03.02.2009 and in absence of execution of BBA, due date of possession as explained above in para (vi) is 03.02.2012. Now, even after lapse of 11 years respondent is not able to offer possession to the complainants. Respondent has not even specified the valid reason/ground for not offering the possession of the booked plot. Complainants however are interested in getting the possession of the booked plot. They does not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainants till date nor has obtained the completion certificate of the project in question. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date i.e. 03.02.2012 to the date on

which a valid offer is sent to them after obtaining completion certificate.

(xii) 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;

(xiii) Consequently, as per website of the state Bank of India i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 12.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

(xiv) Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

> *"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18,*

and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

16. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 10.70% till and said amount works out to ₹ 32,39,707/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 12.07.2023
1.	₹ 26,45,126/-	03.02.2012	32,39,707/-
	Total = ₹ 26,45,126/-		₹ 32,39,707/-
2.	Monthly interest		₹ 23,263/-

17. Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 32,39,707/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 26,45,126/- monthly interest of Rs. 23,263/- shall be payable up to the date of actual handing over of the possession after obtaining completion certificate. The Authority orders that the complainants will remain liable to

pay balance consideration amount to the respondent when an offer of possession is made to them.

18. The complainants are seeking compensation on account of mental agony, torture, harassment caused for delay in possession, deficiency in services and cost escalation. 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.

I. DIRECTIONS OF THE AUTHORITY

19. 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 of Rs. 32,39,707/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of Rs. 26,45,126/- monthly interest of Rs. 23,263/- shall be payable by the respondent to the complainants up to the date of actual 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 them.

(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, 10.70% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

.....
NADIM AKHTAR
MEMBER]

.....
DR. GEETA RATHEE SINGH
[MEMBER]