



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2477 of 2019</b>
<b>Date of filing:</b>	<b>10.10.2019</b>
<b>Date of first hearing:</b>	<b>07.11.2019</b>
<b>Date of decision:</b>	<b>31.10.2023</b>

Hina Nagpal  
R/o H.No. 56, Near Joseph Convent School,  
Sector-NH/5, Faridabad, NIT, Haryana

...COMPLAINANT

VERSUS

Pivotal Infrastructure Pvt. Ltd.  
Registered office: 704-705, JMD, Pacific Square,  
Sector-15, Part-ii, Gurugram.

...RESPONDENT

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

**Present:**            Ms.Rupali Verma, learned counsel for the complainant  
                             through VC.  
  
                             Mr. Rohan Gupta, learned counsel for the respondent  
                             through VC.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 10.10.2019 has been filed by complainant 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.

**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	Royal Heritage'
2.	Nature of the Project	Residential Township Project
3.	RERA registered or not	Registered vide Registration Certificate No. HRERA-PKL-FBD-47-2018 dated 14.09.2018
4.	Apartment/Flat no.	Apartment No. T-19/ Armaan/ 17N/ 0605, 6th Floor.



5.	Super area	1045 sq. ft.
3.	Date of booking by original allottee M/s Anjani Jain	24.03.2012
4.	Endorsement in favour of complainant Ms. Hina Nagpal.	06.09.2012
7.	Date of allotment to complainant	04.10.2012
8.	Date of Builder buyer agreement(BBA)	Not executed
9.	Deemed date of possession	23.03.2015. <i>As per clause 13 of the application form, the respondent was under an obligation to handover the physical possession of the flat to the complainant within a period of 36 months from the date of booking, i.e. 24.03.2012 when the flat was allotted to the original allottee. Accordingly, the due date for handing over the possession of the said flat was 23.03.2015.</i>
10.	Total sale consideration	Rs. 29,52,938/-
11.	Amount paid by complainant.	Rs. 27,22,905.82/-
12.	Offer of possession	18.08.2020 accompanied with illegal demands.
13.	Date of possession	18.07.2023 after intervention of Authority.



**B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANT**

1. That a flat bearing no. No. T-19/ Armaan/ 17N/ 0605 was initially allotted to original allottee namely Ms. Anjani Jain on 24.03.2012 in the respondent's project namely, 'Royal Heritage, Faridabad. However, on 06.09.2012 complainant purchased the said flat from M/s Anjani Jain. A copy of endorsement letter dated 06.09.2012 has been annexed as Annexure C-1.
2. That on 04.10.2012, an allotment letter was issued in favour of complainant whereby flat No. T-19/ Armaan/ 17N/ 0605, 6th Floor measuring super area of 1045 sq. ft. in project 'Royal Heritage' sector 70 Faridabad, Haryana, was allotted to complainant for Rs.29,52,938/- (Annexure C-2).
3. That the complainant has paid Rs. 27, 22,905.82/- till date which is more than 90% of the total sale consideration. The complainant has paid instalments as per the demands raised by the respondent and has always been ready and willing and had resources to pay the balance amount but now she has lost faith in the project and is seeking refund of her money deposited along with the interest.
4. That it is pertinent to mention here that till date no buyer's agreement has been executed between the complainant and the respondent which led to the violation of Section 13 of the Real Estate (Regulation and





Development) Act, 2016 read with Rule 8 of the Haryana Real Estate (Regulation and Development) Rules, 2017. For ease of appreciation the Section 13 has been reproduced hereunder:

***"13. No deposit or advance to be taken by promoter without first entering into agreement for sale"***

*(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force*

5. That as per clause 13 of the application form, the respondent was under an obligation to handover the physical possession of the flat to the complainant within a period of 36 months from the date of booking, i.e. 24.03.2012 when the flat was allotted to the original allottee. Accordingly, the due date for handing over the possession of the said flat was 23.03.2015. However, till date, no possession has been handed over to the complainant. Hence, there is a delay of 4 years 6 months till date. For ready reference relevant part of **Clause 13 of the Application form** is reproduced hereunder:-

*"13. That Company shall endeavour to give possession of the flat to the intending allottee(s) within a period of 3 years subject to force majeure circumstances and on the receipt of complete payment of the basic sale price and other additional charges due and payable up to the date of possession according to the payment plan applicable to him/her. The company on completion of the construction shall issue final call notice to the intending allottee(s), who*



*shall within 30 days thereof, remit all dues and take possession of the unit. In the event of his/her failure of take the possession for any reason whatsoever, he shall be deemed to have taken possession of the allotted unit and shall bear all the O&FM charges and any other levies on account of the allotted unit + holding charges maintaining your flat till the possession is taken.'*

6. Further, clause 9 of the application form inter alia, stipulates that the respondent is entitled to charge 24% per annum interest on the delayed payments from the complainant. In this very clause the respondent talks about 'time' being the essence of the contract, whereas he himself has failed to comply with the same. There is no clause in the application form stipulating respondent's liability in case he/she is unable to develop and deliver the project within the agreed period of 36 months. The aforesaid condition is unilateral and arbitrary. For ease of appreciation Clause 9 is reproduced hereunder:-

*"9. The timely payments of the instalments is the essence of the Contract.' It shall be incumbent on the intending allottee(s) to comply with the terms of payment and other terms and conditions of the sale, failing which the intending allottee (s) shall have to pay the interest of 24% per annum on the delayed payments and the company reserves its right to forfeit the earnest money in the event of irregular/ delayed payments/non-fulfilment of terms of payment and the allotment maybe cancelled at the sole discretion of the company."*

7. That however, as per the definition of "interest" provided under sub-section (za) of Section 2 of the Real Estate (Regulation and Development) Act, 2016, the rate of interest chargeable by the promoter



in case of default should be equivalent to the rate of interest payable by the promoter/colonizer in case it is in default. Therefore, the respondent should also be held liable to pay interest @24% from the due date of delivery of possession till actual handing over of physical possession.

8. That the occupation certificate (OC) for tower 19, 20, EWS Block was applied on 06.09.2018 which has not yet been granted. The project is far from completion and the complainant is suffering because of undue delay on the part of the respondent in handing over of the physical possession of the apartment/flat.
9. It is pertinent to state that last payment was made by complainant in January, 2017 and thereafter there was no intimation regarding the dues for approximately two years by the respondent. Thereafter, on 07.03.2019, 06.05.2019, 27.06.2019, 08.08.2019, complainant has been served with final reminder notices by respondent for payment of dues along with the calculated interest. Whereas, the complainant vide letter dated 11.04.2019 informed the respondent that she had paid timely instalments. Therefore, the question of interest on delayed payment does not arise at all. The complainant in the aforesaid letter very specifically stated that she no longer seek possession of the flat. Further, she has claimed refund of the entire amount along with the interest. The respondents paid no heed to the requests of the complainant for refund; instead, they kept on sending reminders regarding delayed payments.





10. That the respondent has failed to abide by the contractual terms stipulated in the application form, thus is in breach of contract. The cause of action to file the complaint is continuing, inasmuch as despite receipt of more than 90% of the total amount and lapse of almost 4 years from the due date of handing over of possession, the respondent has failed to deliver possession of developed project. Since the respondent is in default, the complainant is entitled to invoke section 18 of RERD Act, 2016 and for ease of appreciation, the said provision is reproduced as under:

***“18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-***  
*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect to that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.*

11. That the complainant has invested her earnings in the project based on assurances given by the respondent. However, they have been cheated and harassed. The respondent has misappropriated the amount paid by the complainant and the amount has not been put to use for timely





development of the project, now, the complainant have lost faith in the project of respondent and therefore, are entitled to refund of the entire amount paid and other charges along with interest from the date of respective payments.

### **C. RELIEF SOUGHT**

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

- i. In the event the registration has been granted to the respondent for the project namely, 'Royal Heritage' at Sector 70, Faridabad, Haryana, under RERD Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERD Act for violating the provisions of the RERD Act, 2016.
- ii. In exercise of powers under Section 35, direct the Respondent to place on record all statutory approvals and sanctions of the project;
- iii. In exercise of powers under Section 35 OF RERD Act, 2016 and Rules and Rule 21 of the HRE(R&D) 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. 27,22,905/- along with interest @



- 24% interest from dates of respective instalments paid by the complainant;
- v. To withdraw illegal demand of Rs.1,66,484.93/-.
  - vi. To pay compensation of Rs.5,00,000/- 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 reply on 01.12.2020 pleading therein:

13. That this Hon'ble Authority does not have the jurisdiction to entertain and adjudicate the present complaint and the present complaint has been filed in contravention to the provisions of the Real Estate (Regulation and Development) Act, 2016 and hence the complaint is liable to be dismissed on this short ground alone.

14. That the provisions of the RERD Act, 2016 cannot be made applicable retrospectively as the complainant was allotted the unit vide allotment letter dated 04.10.2012 and therefore the present complaint cannot be



adjudicated by this Hon'ble Authority under provisions of the RERD Act, 2016.

15. That the project 'Royal Heritage' has been registered by this Hon'ble Authority and has approved the completion date of the project as 31.12.2019 and the said deadline has not reached yet therefore, the present complaint is pre-mature as the said period is not yet over and the complainant are not at all entitled to claim any compensation for the same.
16. 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 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
17. That the present complaint fails to disclose any cause of action against the respondents and therefore the present complaint is liable to be dismissed on this ground as well.
18. That complainant is only a subsequent purchaser of the allotment and is an investor who is interested in making huge premium by investing in real estate and since the project is not commanding much premium in today's diminishing real estate market therefore the complainant had approached this Authority to obtain interest as prescribed under the Real





- Estate (Regulation and Development) Act, 2016 ("RERD Act") so that the complainant could make money at the cost of the opposite party.
19. It is denied that the complainant has paid more than 90% of the total sale consideration. The complainant had been highly erratic in making payments of the due installments which were construction linked and the same is reflected in the statement of account. The copy of the statement of account is annexed as Annexure R3.
20. That the flat buyer agreement has not been executed by the complainant due to her own fault as the complainant did not return the flat buyer agreement which was handed over to her for execution and now the complainant is trying to take advantage of her own wrongs. Further, the respondent is not in breach of the provisions of the RERD Act, 2016 since, the allotment was made in the year 2012 and the provisions of the Act came into force in the year 2016.
21. That the respondent had completed the construction of the subject tower no. 19 and had already applied for the grant of occupation certificate vide letter dated 06.09.2018. The respondent had already completed 18 towers (entire project) and had already obtained occupation certificate in respect to 14 towers and thus, the respondent is delivering the physical possession of the project in phases.
22. That the application form being referred to by the complainant and the copy of the application form annexed by the complainant in the complaint



is a blank unsigned document which doesn't carry any legal sanctity to it and hence the same is not binding,

23. That the complainant started demanding refund only when the respondent had completed the project and is awaiting the grant of occupation certificate by the department in respect to the subject tower. The complainant had not paid the installments on time and thus interest was being levied by the respondent for the delayed payments on the complainant and the complainant being an investor was looking for an excuse to withdraw from the project. Thus, the complaint deserves to be dismissed.

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

24. During oral arguments learned counsel for the complainant stated that initially the complainant had prayed for refund of paid amount along with interest on paid up amount, however, when Ld. counsel for respondent during hearing dated 12.10.2022 apprised the Authority that project had been completed; occupation certificate has been received from DTCP, Haryana on 17.08.2020 and possession is ready to be delivered, then ld. counsel for complainant has stated her willingness to stay with the respondent's project and wanted to amend her relief from refund of paid up amount along with interest to possession along with delay possession interest as per provisions of the RERD Act. An application for



amendment dated 22.09.2023 has also been placed on record by ld. counsel for complainant to amend her relief. Therefore, vide order dated 12.10.2022 respondent was directed to hand over possession to the complainant and in compliance possession was finally handed over to complainant on 18.07.2023. Now, the grievance of complainant is limited to the relief of delay possession interest payable by the respondent for causing delay in handing over of actual possession within stipulated time.

Further, Ms. Rupali Verma, learned counsel for complainant stated that complainant has already paid more than 90% of the total sale consideration and ready to pay the balance consideration. However, she disputed that respondent is charging more rate of interest from complainant on delayed payments than the rate of interest respondent is paying on account of delayed possession. Therefore, she requested the Authority for issuance of directions to the promoter to charge equitable interest as per section 2(za) of the Act of 2016 for payment of outstanding dues by the complainant.

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

25. Whether the complainant is entitled to delay possession interest in accordance with proviso to Section 18 (1) of the RERD Act for causing delay in handing over of possession from the deemed date of handing over of possession ?





## H. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

26. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observed that respondent in its written statement has raised preliminary objections that present complaint is not maintainable under the provisions of the RERD Act, 2016 as flat was allotted to the complainant on 04.10.2012 i.e., before coming into force of RERD Act and provisions of the RERD Act of 2016 cannot be made applicable retrospectively.

27. In this regard, Authority observes that after coming into force the RERD 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 RERD Act, 2016 coming into force the terms of allotment/ agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per allotment letter/ agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding allotments/ agreements executed prior to coming into force of the RERD Act, 2016 was already dealt in detail by this Authority in complaint no.

*had*

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 al 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."*

*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."*

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 allotments to the parties prior to the commencement of the Act.

28. Further, the respondent has averred that this complaint is premature as the project is registered with this Authority vide registration no. HRERA-PKL-FBD-47-2018 dated 14.09.2018 (Annexure -R1) and its extension was also granted vide letter dated 08.07.2019 (Annexure-R2) whereby Authority had approved the completion of the project till 31.12.2019 and the deadline for completion of project has not reached at time of filing complaint. Thus, the complainant is not at all entitled to claim any compensation on account of delay in handing over possession. In this regard, Authority is of the considered view that the mere fact that the project is registered with this Authority will not affect the term of contract as agreed between the parties at the time of booking. 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 has 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 as per terms agreed between the parties at the time of booking of the unit. Therefore, an opportunity to the promoter to prescribe fresh timeline under Section 4(2)(1)(C) in case of an on-going project does not absolve the promoter of his liabilities towards the allottee as per the terms agreed between them at the time of booking. In the present case, since respondent was under obligation to deliver flat within 3 years from date of booking in terms of clause 13 of application form, complainant cannot be expected to wait endlessly to get the possession of the allotted apartment. In view of above, the plea of plea of the respondent that this complaint is premature is hereby rejected.

29. Further, the plea of the respondent that the complainant is only a subsequent purchaser and therefore not an allottee as per provisions of the RERD Act is outrightly discarded by Authority on the ground that the term "allottee" as defined in the Act also includes and means the subsequent allottee, hence is entitled to the same relief as that of the original allottee. 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."*

From a bare perusal of the definition, it can be safely reached to the only logical conclusion that no difference has been made between the original allottee and the subsequent allottee 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. Thus, as soon as the unit is re-allotted in the name of complainant, she become the allottee and nomenclature "subsequent allottee" shall only remain for identification for use by the promoter. Therefore, the authority does not draw any difference between the allottee and subsequent allottee per se.

30. The respondents have also raised the plea that the complainant had stopped making payment after January 2017. This plea of the respondents is also not sustainable because firstly the respondents have failed to place on record any document showing that the complainant had failed to make payment in response to demands raised by them from January 2017 till March 2019. Secondly, the extraordinary delay caused in completion of the project would obviously discourage the complainant to make payments. The complainant is not expected to keep making payments despite lapse of due date of handing over of possession and that too when even builder buyer agreement was not executed between the parties. Admittedly, the construction work was not complete as per time





stipulated for delivery of possession. In such circumstances, the complainant was discouraged from sinking her hard earned money in a failed project. In the present case, admittedly complainant has already paid 90% of sale consideration and now complainant cannot be compelled to pay complete payment when respondent itself has failed to fulfill its obligation to complete the project and offer the possession within the time stipulated for handing over of possession.

31. The Authority has considered the written as well as oral pleadings of both the parties. Authority observed that possession was offered to complainant on 18.08.2020. However, Authority considers that the offer of possession made on 18.08.2020 is illegal and bad in law because of the facts undisputed by the respondent as and when alleged by the complainant, firstly on account of demand of enhanced EDC by respondent and secondly, for not incorporating delay possession interest payable by the respondent. However, when respondent had stated its intention to deliver the possession to complainant since project is complete after receiving occupation certificate, complainant agreed to amend her prayer to stay with project. Considering such facts, vide order dated 12.10.2022 respondent was directed to handover possession to complainant and in compliance respondent has actually handed over the possession to complainant on 18.07.2023 after intervention of the Authority.

A handwritten signature in blue ink, appearing to be 'J. K. D.', is written over a horizontal line.

32. Admittedly project is complete, occupation certificate has been received from DTCP, Haryana on 17.08.2020 (Annexure R-3) and possession has been handed over to complainant after intervention of the Authority on **18.07.2023**, after amendment of relief by complainant from refund to possession along with delay possession interest. Now the only issue remains to be adjudicated by the Authority is the delay possession interest payable by the respondent for causing delay in handing over of possession from deemed date of possession.

33. Admittedly, the booking was made on 24.03.2012 and allotment in 04.10.2012 and despite lapse of more than 10 years of booking the respondents have not executed any builder buyer's agreement (BBA). In absence of BBA, reliance can be made upon terms agreed between the parties in application form. As per Clause 13 of application form, the respondent was obliged to hand over possession within 3 years from the date of booking. In allotment letter issued by respondent to complainant, the date of booking has been mentioned as 24.03.2012 and 3 years from "date of booking" comes out to be 23.03.2015. However, actual physical possession was handed over to complainant on 18.07.2023 and that too after intervention of the Authority. Considering the said facts, delay in handing over of the possession of the unit has been established. Thus, respondent is liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession i.e.,



23.03.2015 till the handing over of possession, i.e., 18.07.2023 at the rate prescribed in Rule 15 of the HRERA Rules, 2017.

34. The provision of delayed possession charges till the handing over of the possession 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.

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. Further, the prescribed rate of interest has been provided 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 subsections (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”.*

37. 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. 31.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

38. Complainant is praying for delayed interest @24%. In this regard, Authority is of the considered view that 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.

39. Authority has got delay interest calculated from its account branch. The details of amounts paid by the complainant and delay interest calculated on said amounts are shown in the following table: -

Amount paid by complainant	Upfront delay interest calculated by Authority till date of possession i.e., 18.07. 2023 @ 10.75% p.a rate of interest.
Rs. 27,22,905.82/-	<b>Rs. 23,52,893/-</b>

Thus, the upfront delay interest as calculated by Authority till date of possession i.e., 18.07.2023 @ 10.75% p.a rate of interest comes out to be **Rs. 23,52,893/-**.

40. With respect to the amount of balance consideration payable by the complainant, respondent has issued its statement of account dated 09.03.2023. As per Page no. 4 of said statement of account, total amount due from complainant amounts to Rs. 33,48,873.02/-, out of which respondent has shown a received amount of Rs. 27,47,690.41/-. Therefore, balance amount payable by the complainant amounts to Rs. 6,01,182.61/-. The said outstanding dues shall be payable along with the interest from the due date of payment and the rate of interest chargeable by the respondent- promoter on account of delay payment by the

*Lead*

complainant shall be equitable as per section 2(za) of the Act of 2016 as awarded to the complainant in the present case i.e., SBI MCLR+2% i.e., 10.75% (8.75%+2%).

41. Respondent has also issued a statement of account dated 27.04.2023. However, accounts branch of authority observed that in the said statement of account dated 27.04.2023, there is a calculation error on part of respondent as net cost minus amount received is not matching the balance payable, therefore this statement of account is not considered by the Authority. Further, in same statement of account, respondent has also included holding charges to be payable by complainant. With respect to issue of holding charges, it is observed that since only the offer dated 18.07.2023 has been held to be the valid offer of possession when the possession was actually handed over to the complainant, therefore, there does not arise question of imposition of any holding charges.
42. The complainant is seeking compensation of Rs.5,00,000/- on account of harassment, mental agony and undue hardship caused to the Complainant on account of deficiency in service and unfair trade practices along with compensation of Rs.1,00,000/- on account of litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.", 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 complainant are advised to approach the Adjudicating Officer for seeking the relief of compensation harassment, mental agony and undue hardship to complainant and litigation cost.

43. Further, complainant are seeking certain reliefs under clause (i), (ii), (iii), of their prayer, however, said reliefs have nowhere been claimed by the complainant in their complaint nor pressed by them during arguments. Hence, complainant prayer with respect to said reliefs is rejected. Further as per relief sought under clause iv, Authority has directed to charge the delay payment interest as already decided in para 42 of this order.

#### **H. DIRECTIONS OF THE AUTHORITY**

44. 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. 23,52,893/- to the complainant towards delay already caused in



handing over the possession within 90 days from the date of uploading of this order.

(ii) Complainant will remain liable to pay balance consideration of Rs. 6,01,182.61/- along with the interest to the respondent.

(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 complainant which is not part of the agreement to sell.

(v) The respondent shall not charge holding charges from the complainant.

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

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

  
.....  
NADIM AKHTAR  
[MEMBER]