HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**308 of 2018**
Date of filing:	**09.07.2018**
Date of first hearing:	**21.08.2018**
Date of decision:	**20.12.2023**

Anju Tyagi W/o Sh. Dinesh Kumar Tyagi
R/o House no. 12, 2nd floor, Village Budhella
Vikaspuri, New Delhi

....COMPLAINANT(S)

VERSUS

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

....RESPONDENT(S)

CORAM:	**Parneet S Sachdev**	**Chairman**
	Nadim Akhtar	**Member**
	Dr. Geeta Rathee Singh	**Member**
	Chander Shekhar	**Member**

Present: - Mr. Vivek Sethi, Counsel for the complainant through VC.

Mr. Shubhnit Hans, Counsel for the respondent through VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Captioned complaint was disposed of vide order dated 31.10.2019 passed by the Authority. Now, complaint has been remanded back by

Rathee

Hon'ble Real Estate Appellate Tribunal vide order dated 24.08.2023 passed in Appeal no. 493/2021 titled as Anju Tyagi vs TDI Infrastructure Pvt Ltd. Accordingly, case was re-listed today for hearing afresh on merits on 16.11.2023. On 16.11.2023 Authority had observed as follows:-

> *"In view of aforesaid submissions, Authority is of view that respondent has not fulfilled his obligations in delivering the possession of unit within stipulated time specified in builder buyer agreement. However, the relief of refund of paid amount with interest cannot be awarded today for the reason that there is issue in proof of paid amount. Complainant claims to have paid an amount of Rs 25,03,022/- but as per statement of account of year 2018,annexed by both parties the admitted paid amount is Rs 24,01,478/-. But as per receipts annexed in file paid amount is Rs 25,03,022/-, one receipt which does not find mention in statement of account is annexed at page no. 43 of complaint. Further, vakalatnama in the complaint is of Adv. Vikas Deep whereas now Adv. Vivek Sethi is appearing on behalf of complainant. So, ld. counsel for complainant is directed to clarify upon the issue of paid amount and to file his vakalatnama. Requisite documents be filed within next 10 days with advance copy supplied to respondent. Respondent is also directed to apprise the status of occupation certificate of unit in question on the next date of hearing."*

Rathee

2. Thereafter, case got adjourned for today for final hearing on merits. Present complaint has been filed on 09.07.2018 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Espania Height, Main NH-1, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Registered vide HRERA-PKL-SNP-161-2019
4.	DTCP License no.	1065-1068 of 2006,
	Licensed Area	12.64 acres

5.	Unit no.	EH-09-0402
6.	Unit area	1075 sq. ft.
7.	Date of allotment	20.09.2012
8.	Date of builder buyer agreement	21.09.2012
9.	Due date of offer of possession (30 months)	21.03.2015
10.	Possession clause in BBA (clause 28)	.....However, if the possession of the apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the purchaser shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs.5 per square foot of the total super area of the floor. The purchaser agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the apartment.
11.	Total sale consideration	₹ 24,92,665/-.
12.	Amount paid by complainant	₹ 24,01,478/- Complainant in his pleadings at page no. 6 of complaint claims paid

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		amount of Rs 25,03,022/-. But respondent and complainant has placed on record statement of account for paid amount of Rs 24,01,478/-. But receipts attached in complaint are for Rs 25,03,022/-. Ld. Counsel for complainant was granted an opportunity vide order dated 16.11.2023 to clarify on this issue. At the time of hearing, ld. Counsel for complainant made a statement to consider paid amount as Rs 24,01,478/- only.
13.	Offer of possession (fit-out)	28.05.2018
14.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that Ms. Nimmi Tyagi, original allottee had booked a flat by making payment of Rs 4,00,000/- on 31.07.2012 as advance against present and future project for 1075 sq ft residential flat. Following which allotment letter dated 20.09.2012 was issued in favor of original allotee and floor no. EH-09-0402 having area 1075 sq ft in project "Espania Heights", NH-1, Kamaspur, Sonipat was allotted.

4. That builder buyer agreement was executed between the original allotee and respondent on 21.09.2012 and in terms of clause 28 of it, the possession was supposed to be delivered upto 21.03.2015. Complainant has paid an amount of Rs 24,01,478/- against total sale consideration of Rs 24,92,665/- upto 29.04.2017.

5. That the allotment rights of unit were purchased by complainant on 21.05.2016 and endorsement to this effect was made by respondent on 02.06.2016. Time was made essence of the builder buyer agreement and possession was to be handed over latest by 20.03.2015.

6. That even after passing of about 6 years from booking, the respondent is not in condition to handover the possession of the unit in question as the unit has not been completed till date. But respondent in an illegal manner issued a letter stipulating the same as 'offer of possession for fit-out' on 28.05.2018. Said offer of possession was not accepted by complainant being illegal in eyes of law for two reasons; first, it was not supported with occupation certificate and second, it was accompanied with various unjustified demands like club membership charges, interest free maintenance charges, vehicle parking charges and demand for increased area 1075 sq ft to 1236.25 sq ft which were neither statutory nor agreed between the parties. So, the respondent failed to honor its contractual obligations by not offering a valid offer of possession within the time stipulated in builder buyer agreement.

Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

7. Complainant in his complaint has sought following relief:

i. The respondent be directed to refund an amount deposited with interest @ 18% per annum compounded annually, from the respective deposits till the refund of amount, with cost of the present complaint, in the interest of justice.

ii. The respondent be further directed to pay the statutory compensation, on amount deposited from their respective deposits till refund, in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 02.08.2023 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-Espania Heights, Sonipat, Haryana.

9. That the project in question is not registered under the provisions of the Real Estate (Regulation & Development) Act,2016 and hence the present complaint is not maintainable before this Ld. Forum.

10. That the builder buyer agreement between the complainant and respondent has been executed on 21.09.2012 which is much prior from

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the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

11. That respondent had vide letter dated 12.09.2016 applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Copy of said letter is attached as Annexure R-5.

12. That the contents of letter dated 28.05.2018 (offer for fit-outs) forms a part of record which clearly establishes that apartment of complainant is ready for fit-outs and occupation certificate is awaited and the possession of the unit will be handed over as soon as the occupation certificate is received. So far as demands raised with offer for fits out are concerned, the same are legitimate and have been demanded as per the schedule of payments and in consonance with the agreed terms of builder buyer agreement.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

13. During oral arguments learned counsel for the complainant insisted upon refund of paid amount of Rs 24,01,478/- (as per statement of account at page no. 24 of reply) with interest stating that possession has been delayed by the respondent for around 8 years and even as of today, the respondent is not in a position to give valid offer of possession as occupation certificate has not been received till date.

Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that respondent had re-applied for occupation certificate in year 2022 but it has not been received yet.

F. ISSUES FOR ADJUDICATION

14. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. 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) Respondent has raised an objection that the project in question is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have jurisdiction to entertain the present complaint. It is pertinent to mention here that the project in which the unit in question is situated is registered with the Authority vide Registered vide HRERA-PKL-SNP-161-2019 dated 15.11.2019. Further, issue that whether this Authority has jurisdiction entertain a complaint where the unit in dispute is in a project that 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**

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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 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."

(ii) 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 the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in ***complaint no.***

113 of 2018 titled as Madhu Sareen v/s BPTP Ltd decided on 16.07.2018. Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."*

Further, as per recent judgement of Hon'ble Supreme 34(e) it is the function of the Authority to ensure compliance 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, 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

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real estate projects, furthermore, as per section 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 complainants are entitled to delay interest at prescribed rate u/s 18(1) of RERA Act or for refund of paid amount till actual realization. Therefore, objection raised by the respondent with regard to maintainability of the present complaint is rejected.

(iii) Factual matrix of the case is that complainant (subsequent allotee) had purchased the booking rights qua the flat/apartment in question in the project of the respondent in the year 2016 from original allotee against which an amount of ₹24,01,478/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 1,02,933/- was made to respondent on 29.04.2017 by allotee which implies that respondent is in receipt of total paid amount since

year 2017 whereas fact remains that no valid offer of possession duly supported with occupation certificate has not been yet made to complainant.

(iv) Authority observes that the builder buyer agreement got executed between the parties on 21.09.2012 and in terms of clause 28 of it, the respondent was supposed to handover possession upto 21.03.2015. In present case, respondent failed to honour its contractual obligations of offering possession of the allotted unit within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline even in its reply regarding delivery of valid offer of possession. Moreover, respondent vide letter dated 28.05.2018 had offered fit out possession of unit to complainant alongwith additional demand of Rs 8,51,205/-. But complainant did not pay any amount towards acceptance of said offer. In this regard, Authority observes that disputed offer of possession was not a legal offer in eyes of law for the reason that it was not supported with occupation certificate. So, complainant was not bound to accept it. In these circumstances, it is concluded that a valid offer of possession of unit has not been made till date to complainant. At present, unit in project in question is not complete and is not ready for usage. This status of project is duly supported by the fact that occupation

certificate which stands applied in year 2016 by the respondent has not been yet received and respondent is not having reasonable justification for non-receipt of occupation certificate even after delay of 6-7 years. Complainant has unequivocally stated that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(v) Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*** " in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

> "25. *The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter*

is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

(vi) The project/unit in question did not get completed within the time stipulated as per agreement, nor any specific date for handing over of possession has been committed by the respondent. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be fit case for allowing refund along with interest in favor of complainant.

(vii) In the present case respondent company transferred booking rights in favour of complainant vide endorsement on 02.06.2016. The principal argument of the respondent is with regards to the rights of the subsequent allottee i.e the complainant 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. In cases where the complainant/ subsequent allottee had purchased the unit after expiry of the due date of possession i.e. 21.03.2015(30 months from date of agreement), the Authority is of the view that the subsequent allottee cannot be expected to wait for an uncertain period of time to take possession. Even such allottee waiting for the promised unit and surely he would be entitled to all reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute that knowledge that such delay would continue indefinitely based on prior assumption would not be justified. Furthermore, in cases where the floor buyer agreement was a pre-RERA contract and the subsequent allottee stepped into the shoe of the original allottee after the deemed date of possession but before RERA Act,2016 coming, the statutory right to seek delayed possession interest or refund had not accrued in favour of the original allottee. However, after the date of endorsement i.e. 02.06.2016 the subsequent allottee stepped into the shoe of original allottee w.r.t the unit and the possession was not handed over, the subsequent allottee became entitled to the statutory relief of delayed interest or refund and same shall be applicable only from the date he was acknowledged as allottee by the respondent promoter. For this reliance is placed upon the judgement dated 22.07.2021 passed in

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Civil Appeal no. 7042 of 2019 titled as "**M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh**" in which the Hon'ble Supreme Court observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. However, mere knowledge that there is delay in delivery of possession does not justify delay beyond a reasonable period of time. Therefore, such subsequent allottee is entitled to relief of refund of principal amount, with interest from the date the builder acquired knowledge of the transfer, or acknowledged it. Relevant part of the order of the Hon'ble Supreme Court is reproduced below:

> "31. *In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class.*

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Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms"

In present complaint, the respondent endorsed the transfer of booking rights qua the unit in question in respect of the complainant on 02.06.2016 which is after the expiry of due date of possession i.e 21.03.2015. Thereafter, there was a delay of more than 7 years in delivery of possession of the booked unit. As per version of the

respondent the construction of the project was completed by the respondent in the year 2016 but occupation certificate has not been received till date. Respondent issued fit-out offer of possession to the complainant on 28.05.2018. At the time of purchase in year 2016, the complainant was aware that the construction of the project is being delayed beyond the due date of possession. However, even the purchaser agrees to purchase a unit with an apprehension that the possession will not be delayed beyond a reasonable expectation, however, in present complaint, the possession has been delayed by more than 7 years from the date of endorsement i.e 02.06.2016 which is an unreasonable delay. Therefore, in light of M/s Laureate Buildwell Pvt Ltd. Vs Charanjeet Singh judgement the complainant will be entitled to interest on the total paid amount from the date of endorsement i.e 02.06.2016 till the date of actual realization.

(viii) 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;

16. Complainant has sought refund of paid amount with interest @18%. In this regard it is stated that the legislature in its wisdom in the subordinate legislation under the provisions 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.

17. 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. 20.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

18. 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".

19. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 24,01,478/- 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 of endorsement till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order and said amount works out to Rs 19,39,160/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment or endorsement whichever is later	Interest Accrued till 20.12.2023
1.	22,83,186	02.06.2016	18,54,604
2	15,359	29.04.2017	10979
3.	1,02,933	29.04.2017	73577
4.	Total=24,01,478/-		Total= 19,39,160/-
5.	Total Payable to complainant	2401478+1939160=	43,40,638/-

20. The complainant is seeking statutory compensation on amount deposited with respondent with interest. However, no specific grounds/factors for claiming compensation has been mentioned in the pleadings nor argued at time of hearing. In this regard, 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation charges.

H. DIRECTIONS OF THE AUTHORITY

21. 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 ₹ 43,40,638/- to the complainant.

(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.

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

.....
CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET S SACHDEV
[CHAIRMAN]