



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	20.09.2023
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Name of Builder	Parsvnath Developers Limited
Project Name	Parsvnath Elite Floors, Dharuhera, Rewari, Haryana

Sr. No.	Complaint No.	Complainant
1.	900 of 2023	Dr Vipul Kumar S/o Sh. H.S.L. Srivastava and Smt Seema Srivastava W/o Dr Vipul Kumar, Both R/o Flat no. 703, Moon Court, Tower-5, J.P. Greens, Greater Noida- 201310
2.	902 of 2023	Sh Ravinder Pal Marwah S/o Sh. Dr. R.C. Mrwh And Smt Sindhu Marwah, Both R/o Flat no. 306, Sanskriti Apartments, Sector-46, Faridabad- 121010

VERSUS

M/s Parsvnath Developers Ltd.,

through its Managing Director,

Registered Office: Parsvnath Metro Towers, Near Shahdra Metro Station,
New Delhi- 110032

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

...RESPONDENT

Member
Member

Present: - Ms. Aakanksha Kochan Advocate, counsel for complainants in both the cases

Ms. Rupali S. Verma, Counsel for the respondent through VC in both the cases

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of both the captioned complaints filed before this Authority 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.
2. Captioned complaints are taken up together as facts and grievances of both complaints are more or less identical and relate to the same project of the respondent, i.e., "Parsvnath Elite Floors", Parsavnath City, Dharuhera, Haryana. The terms and conditions of the builder buyer agreements which had been executed between the parties are also similar. The fulcrum of the issue involved in both cases pertains



to failure on part of respondent promoter to deliver timely possession of flats in question. Also relief of refund as sought in both the complaints. Therefore, complaint no. 900 of 2023 titled "Dr Vipul Kumar and Smt Seema Srivastava v/s M/s Parsvnath Developers Ltd", has been taken as lead case for disposal of both matters.

A. UNIT AND PROJECT RELATED DETAILS

3. 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	Parsvnath Elite Floors, Parsvnath City, Dharuhera, Rewari.
2.	RERA registered/not registered	Un-registered
3.	DTCP License no.	129 to 132 and 134 to 138 of 2007 dated 03.03.2007
4.	Flat no.	A-022-F
5.	Unit area	2150 sq.ft.
6.	Date of builder buyer agreement	29.04.2013
7.	Deemed date of possession	24+6 months
8.	Total sale price	₹57,90,250/-
9.	Amount paid by complainant	₹11,93,834/-



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT:

4. Facts of complainant's case are that complainants had booked flat bearing no. A-022-F, admeasuring 2150 sq.ft. in a project named "Parsvnath Elite Floor" Parsvnath City situated at Dharuhera, Rewari being developed by respondent promoter. Builder buyer agreement (hereinafter referred as BBA) was executed between the parties on 29.04.2013, copy of same has been annexed as Annexure C-1 with the complaint book. Total sale price of apartment was ₹57,90,250/- out of which complainant had paid an amount of ₹11,93,844/- in the year 2013. Ledger issued by respondent, wherein paid amounts by the complainants are shown is annexed as Annexure C-2 at page 46 of the complaint book. As per clause 9(a) of BBA construction of flat was to be completed within 24 months from the date of commencement of construction on the individual plot with with grace period of 6 months. Accordingly, due date comes to 29.10.2015 but respondent has failed to do so till date.
5. Complainants approached the respondent several times and asked him to complete the project and hand over the possession of the flat but to no avail. Complainants had physically inspected the site and had come to know that there is no scope of handing over of possession of



booked apartment in near future. It has been alleged by complainants that the construction of the project is standstill and development of the project is into doldrums and project is far from completion. Complainants have stated that due to failure on part of respondent, an inordinate delay of almost more than 10 years from date of booking has been occurred. Respondent has miserably failed to deliver the possession of the booked apartment till date. Hence, present complaint has been filed seeking relief of refund along with interest.

C. RELIEF SOUGHT

6. The complainants have sought following reliefs:
- (i) To direct the respondent-company to refund the entire paid amount of ₹ 11,93,834/- along with interest at prescribed rate of interest till the actual realization of amount.
 - (ii) To direct respondent to pay a sum of ₹ 5,00,000/- on account of compensation for mental agony, torture and physical harassment and inconvenience suffered by the complainants due to the acts and conduct of the opposite party.
 - (iii) To direct respondent to pay a sum of ₹ 5,00,000/- on account of the deficiency in services since the respondent indulged themselves into unfair trade practice.
 - (iv) To direct respondent to pay a sum of ₹ 75,000/- as litigation expenses.



- (v) Any other relief -remedy which is deemed fit by this Hon'ble Authority in the present facts and legal preposition of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 30.05.2023 pleading therein:

7. That, the present complaint pertains to un-registered project of the respondent therefore, in view of the latest judgment by Hon'ble Supreme Court in the case '*Newtech Promoters and Developers Pvt. Ltd. Versus state of U.P. and others*' (2021) SCC Online SC 1044, this Hon'ble Authority would not have the jurisdiction to entertain the present complaint filed under the Real Estate (Regulation and Development) Act, 2016.
8. Respondents have stated that agreement with the complainants-allottees had been executed in the year 2013 i.e. more than 3years before the RERA Act, 2016 came into force. Meaning thereby, agreement with the complainants was executed much prior to coming into force of the RERA Act. For this reason also, the Authority has no jurisdiction and the complaint is not maintainable.
9. The present complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the complaint in



present form. In recent judgment by the Hon'ble Supreme Court in the case of '*Surjeet Singh Sahni vs. State of U.P and others*', 2022 SCC online SC 249, the Hon'ble Apex Court has been pleased to observe that mere representations does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time. In the present case the complainant is guilty of delay and laches, therefore, his claim should be dismissed.

10. Respondent in his reply has admitted the fact of booking of flat, the agreed sales consideration, the area and location of the apartment as well as the payment of ₹11,93,834/- made by the complainants. It has been contended that the project is being developed in terms of statutory permissions and approvals granted by competent authorities. The respondent has further submitted that in the year 2007, respondent has been granted license of the project bearing no. 129 to 138 of 2007 for construction of residential colony on an area measuring 112.956 acres which was valid upto 02.03.2016. It has been submitted that basic facilities and amenities like roads, electricity, water, sewage, storm water etc. are duly available at site and respondent has already obtained all the necessary approvals from the competent authorities. Further, OHSR & 2 nos. of tubewells; septic tank and STP have already been arranged for the allottees who are residing. Respondent had already applied for the application of renewal of license which is still pending before the DTCP,



Haryana. On 25.05.2016, Office of Senior Town Planner (STP), Gurugram had confirmed to DTCP, Haryana that all the development works of the project site as per approved layout plan are complete. On 21.02.2021, inspection visit at project site was conducted by learned CTP, HRERA, Panchkula and the observations noted by learned CTP were submitted to Hon'ble Authority.

11. That, issue of valid license being raised by complainant is not tenable as on 28.03.2011 vide memo. No. ZP-110-/JD(BS)/2011/3797-3830 DTCP has directed all the Senior Town Planners in the state that, "building plans/occupation certificate for individual plot holders in the licensed colonies should not be linked with renewal/validity of a license." And the complainant being an individual plot holder had extensive right to construct his own plot irrespective of the fact of renewal of license.
12. Respondent is trying to complete the project for which purpose they have applied for registration with RERA. It has been submitted that respondent has duly complied with the payment of dues and is in the process of availing relief policy for depositing the outstanding EDC. Further, it has been contended that time is not essence of the contract and that there is no intentional delay on his part rather project has been delayed for the reasons beyond his control. Respondent company is putting his best endeavours to streamline and complete the project and if



relief sought by complainant is allowed at this stage, it will not only hamper the project but will also harm the interest of other allottees.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

13. During oral arguments complainants have reiterated their arguments as mentioned in para 3-6 of this order. Learned counsel for respondent also reiterated their arguments mentioned in 7-12 of this order. Further, counsel for respondent referred to Judgment passed by Hon'ble Supreme Court in Civil Appeal No. 5785 of 2019 titled as "Ireo Grace Realtech Private limited Vs Abhishek Khanna & Ors" and stated that in case relief prayed by the complainant is allowed, then interest on the paid amount may be granted only till the date of offer of possession. Further, copy of the said judgment will be filed in the registry for reference. However, no such copy has been filed by the counsel for respondent till date.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

15. The Authority has gone through the rival contention and the documents placed on record. It is admitted by both the parties that the complainant booked a floor, admeasuring 2150 sq.ft. in the real estate project being developed by promoter namely, "Parsvnath Developers



Limited” located at Dharuhera, Rewari, for total sale consideration of ₹ 57,90,250/-. Builder buyer agreement was signed on 29.04.2013 and complainant had paid an amount of ₹ 11,93,834/- against the total sale consideration.

In the present case, the complainant is agreed by the fact that the respondent had promised to deliver the possession of the unit/floor by 29.10.2015. However, till date no possession has been handed over and neither is respondent in a position to handover possession in near future, thus a relief of refund of paid amount along with interest be granted to him.

16. On the other hand, respondent has orally as well as by filing reply has objected to the maintainability of the complaint on following grounds:
 - i. Provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. In present case agreement to sell was executed in the year 2013. Accordingly, respondents have argued that RERA Act cannot have retrospective effect and relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act. In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act.



Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not supposed to be 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.**

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."



Reference can also be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.**

(supra), wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.” “45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.” “53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the 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 ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

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 the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

As on date, the complainants are aggrieved persons who have not been handed over possession of the flat as per agreement of sale. The cause of action i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force. This is a case of breach of contract by the respondents. In the case of breach of contract, argument that provisions of RERA Act, 2016 will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all.



Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. The general law of the land will regulate such situation and not provision of the agreement.

- ii. Another averments of the respondents is that Authority has no jurisdiction to hear the present complaint as it pertains to un-registered project of the respondent. Said plea of respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint. Jurisdiction in matters of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 in complaint case no. **191 of 2020** titled **'Mrs. Rajni & Mr. Ranbir Singh versus M/s Parsynath Developers Ltd.'** and same is followed in present cases as well. Relevant part is reproduced herein 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."

- iii. Respondent has further raised an objection that captioned complaint is barred by limitation. Reference in this regard is made to the judgement of Apex court **Civil Appeal no. 4367 of 2004** titled as **M.P Steel Corporation v/s Commissioner of Central Excise.**

"A number of decisions have established that the Limitation Act applies only to courts and not to Tribunals. The distinction between courts and quasi-judicial decisions is succinctly brought out in Bharat Bank Ltd. v. Employees of Bharat Bank Ltd., 1950 SCR 459. This root authority has been followed in a catena of judgments. This judgment refers to a decision of the King's Bench in Cooper v. Wilson. The relevant quotation from the said judgment is as follows:- "A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation (not 18



Page 19 necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice." 18. Under our constitutional scheme of things, the judiciary is dealt with in Chapter IV of Part V and Chapter V of Part VI. Chapter IV of Part V deals with the Supreme Court and Chapter V of Part VI deals with the High Courts and courts subordinate thereto. When the Constitution uses the expression "court", it refers to this Court system. As opposed to this court system is a system of quasi-judicial bodies called Tribunals. Thus, Articles 136 and 227 refer to "courts" as distinct from "tribunals". The question in this case is whether the Limitation Act extends 19 Page 20 beyond the court system mentioned above and embraces within its scope quasi-judicial bodies as well. 19. A series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies. Thus, in *Town Municipal Council, Athani v. Presiding Officer, Labour Court*, (1969) 1 SCC 873, a question arose as to what applications are covered under Article 137 of the Schedule to the Limitation Act. It was argued that an application made under the Industrial Disputes Act to a Labour Court was covered by the said Article. This Court negatived the said plea in the following terms:- "12. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of



Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. As best, the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least 20 Page 21 remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purposes of limitation by Article 137." Similarly, in Nityananda, M. Joshi & Ors. v. Life Insurance Corporation & Ors., (1969) 2 SCC 199, this Court followed the judgment in Athani's case and turned down a plea that an application made to a Labour Court would be covered under Article 137 of the Limitation Act. This Court emphatically stated that Article 137 only contemplates applications to courts in the following terms: "3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are 21 Page 22 applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed." Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It



seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

In the present case, as promoter has till date failed to fulfil his obligations towards allottees because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts. Accordingly, ground that complaint is time barred by limitation stands rejected.

17. In view of the aforementioned reasons, the present complaint is maintainable and the Authority has complete jurisdiction to adjudicate on present complaint. It is observed that as per Section 11(4)(a) of the RERA Act 2016, the promoter shall be responsible for all obligations, (responsibilities) and function under the provisions of this Act or the rules and regulations made thereunder or to the allottees, as per the agreement for sale. In present case, as per clause 9(a) of agreement for sale dated 29.04.2013, "The developer shall endeavor to complete the construction of Flat within twenty four(24) months from the date of commencement of construction on the individual plot on which the



flat is located with a grace period of six 6(months), after receipts of all requisite approvals as ay be required for commencing and carrying on construction, subject to force majeure, restraints or restrictions from any courts/authorities, circumstances beyond the control of the developer and subject to timely payments by the buyers". Here it is pertinent to mention that no exact date for start of construction has been provided by either of the parties. Nonetheless, the complainant in the complaint has alleged that the respondent promoter was obligated to handover possession of the floor by 29.10.2015 (i.e. 24 months + 6 months from date of execution of the BBA). this deemed date i.e. 29.10.2015 to hand over possession has not been disputed/ denied by the respondent/promoter in its reply. Moreover, on perusal of the possession clause, this Authority is of the view that clause is completely vague, arbitrary and favoring the respondent only. In view of the fact that non-disputed date i.e. 24 months plus 6 months grace period from date of BBA shall be considered as deemed date of possession. Further, it is a matter of fact that the respondent promoter has till date haded over possession nor completed the construction of the unit, Thus, the respondent has failed to fulfill his obligation to handover the possession within stipulated/ agreed time.

18. Further the respondent in para 6 of the reply had admitted that "the project, Parsvnath City, Dharuhera, Rewari, Haryana is being



developed in terms of the statutory permissions and approvals and the delay has been caused due to the reasons that area beyond the control of the respondent company". In this regard Authority observes that the license for development of this project in question was granted to the respondent by the State Government authorities in the year 2007. As per the information received from project branch of this Authority, this project of the respondent is in a serious difficulty. They have applied for registration of project with RERA being an ongoing project. However, their license has not been renewed and the respondent is in serious defaults in payment of overdue External Development Charges (EDC). No development work has taken place for the last over six years. As per Temp Id, RERA-PKL- 104-2018 in its project Section, this Authority has passed following order dated 22.03.2021:

"1. This is an ongoing project of which the license was obtained by the promoters in the year 2007. An application for registration of the project was filed on 10.5.2019. This matter has been listed before this Authority numerous times. The promoters have been shifting their stand from time to time. No construction work is taking place at the project site for the last many years.

2. In order to evaluate ground realities learned CTP of the Authority was appointed Local Commissioner to visit the site and submit his report regarding the stage of construction of the project. Learned CTP has submitted his report which has been made part of file. The respondent



company may obtain a copy of the report from the registry of the Authority if they so desire.

3. *Opening the arguments Shri Shekhar Verma, Advocate, learned counsel for the promoter-developers reiterated that upon filing of an application for registration the Authority is duty bound to register the project. In support of his contentions he drew the attention of the Authority towards provisions of Section 5 of the RERA Act, 2016 and stated that as per law, the Authority is duty bound to either register the project within a period of 30 days or reject the application for reasons to be recorded after giving an opportunity to be heard to the promoter. Further, if the Authority fails to grant registration or to reject the application within a period of 30 days, the project shall be deemed to have been registered.*

4. *The Authority does not agree with the contentions of the learned counsel Shri Shekhar Verma for the reasons that the Authority is not duty bound to register the project of a promoter who is defaulter on multiple counts and whose license has not been renewed by the Town & Country Planning Department. Further, if the promoter has failed to complete the project for more than a decade and no construction work is taking place for past 7-8 years, and more importantly there is no hope for scope for its recommencement in near future, the Authority cannot register such a project. Registration of a project implies that the Authority has satisfied itself about credentials of a promoter and it is satisfied that the project will be completed within the stipulated time frame. Registration of a project by the Authority is an assurance to all future allottees and investors that the Authority will ensure that their money is safe and the project will be completed in time. In this case the promoters have yet to pay 127 crores EDC to the State Government which they are failing to pay last many years. In fact they have collected this money from large number of allottees but have not deposited the same with the Town & Country Planning Department. Further, as per information*



provided in the application for registration an amount of about Rs. 279 crores is required for completion of the project. Despite repeated opportunities granted to the promoters no money whatsoever has been arranged by the promoters for recommencing the construction activities.

Accordingly, the Authority is not satisfied with the capabilities and intentions of the promoters. For these reasons, it cannot and should not register the project at this stage.

6. The Authority after consideration is of the view of the facts of the matter that application filed by the promoters is liable to be rejected. In the event of the application being rejected, alternate options of handing over of the project to the association of allottees can be explored. However, before resorting to this option one last opportunity is granted to the promoters to arrange funds for recommencing of the project construction and also submit monthly plan for its execution. If by the next date adequate funds for commencing construction work are not put in the escrow account and a plan of action for completion of the project is not submitted, the Authority will be constrained to issue a show cause notice for rejection of the application.

7. Adjourned to 03.05.2021.

Further, in the meeting held on 04.10.2021, below orders were passed by the Authority for the respondent promoter in its project Section:

"Since, licenses granted to promoter-applicant are expired since March 2016 and February 2018 and promoter has failed to get them renewed, therefore, Authority decides to adjourn application for registration matter sine die with directions to applicant/promoter to approach the Authority after getting their licenses renewed".

19. It is apparent from the fact of the case that there has been an inordinate delay of more than 8 years in handing over the possession of the unit/floor to complainant. Also, there is no hope that the respondent



would be able to handover the possession in near future. When allottee purchases a unit/floor in Real estate property. It is natural expectation that he/she shall be able to enjoy the same within the time stipulated or agreed. An allottee who invested his hard earned money in the project cannot be expected to wait for an indefinite time, when default is at part of respondent-promoter. In this case development is not taking place at all, nor is there any plan of action for commencing it. On account of multiple defaults on the part of respondent, Authority has not even registered the project. In fact, a thought process is going on to hand over the project to association of allottees, which in other words mean that Authority considers that respondents will not be able to complete the project at their level.

20. Lastly, respondent counsel orally has referred to a Judgment passed by Hon'ble Supreme Court in Civil Appeal No. 5785 of 2019 titled as "Ireo Grace Realtech Private limited Vs Abhishek Khanna & Ors" and stated that in case relief prayed by the complainant is allowed, then interest on the paid amount may be granted only till the date of offer of possession. On perusal of said judgment, it has come to the notice of Authority that respondent had referred to a judgment passed by HRERA, Gurugram, whereby, vide order dated 12.03.2019, Authority had passed an order that developer has failed to oblige the provisions under Section 11(4)(a) of the RERA Act 2016, therefore, developer



was liable under Section 18 to pay interest at prescribed rate on the amount deposited by the complainant, upto the date when possession was offered. It is hereby clarified that firstly facts of every case is different from one another. In reference to the judgment quoted by respondent counsel, it could be clearly seen that in the referred case status of the project was different from the status of project involved in the captioned complaints. In the present case, license issued to respondent is not even renewed and then the question with regard to offering possession does not even intent to be thoughtful. Furthermore, the doubt of respondent with regard to allowing relief of refund to complainant is also clarified by **Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021** titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors.*" 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 judgment 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. Thus, oral contentions as well as written arguments of respondent counsel referring to a judgment which is passed on total different facts cannot be accepted or allowed in the captioned complaint.

21. In view of above findings and after considering above mentioned judgment passed by Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors.*", Authority finds it to be fit case for allowing refund along with interest in favour of complainants. As per Section 18 of Act, interest is defined as under:-

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;

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready referenes:

“Rule 15: Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7)ofsection19]

(1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at therate 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 (NCLR) 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”.”

22. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, 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.
23. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as

on date i.e. 20.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

24. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount.
25. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.75% from the date of payment till the date of this order according to the receipts/statement of accounts provided by the complainants in both the captioned complaints; details are given in the table below –

Sr. No.	Complaint no.	Principal Amount as per receipts/customer ledger/statement of account (in Rs.)	Interest @ 10.75% till 20.09.2023 (in Rs.)	Total amount to be refunded (in Rs.)



1.	900-2023	11,93,834/-	13,33,126/-	25,26,960.8/-
2.	902-2023	11,93,844/-	13,33,177/-	25,27,021/-

26. The complainants are seeking compensation amounting to ₹ 5,00,000/- on account of mental harassment caused due to delay in possession and amount of ₹ 5,00,000/- on account of deficiency in Services as compensation under Section 12 of RERA Act, 2016 and litigation cost of ₹ 75,000/- It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.



H. DIRECTIONS OF THE AUTHORITY

27. 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 amounts along with interest of @ 10.75 % to the complainants i.e. ₹ 25,26,960.8/- in complaint no. 900/2023 and ₹ 25,27,021/- in complaint no. 902/2023 as specified in the table provided in para 25 of this order.
- (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.
28. Captioned complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading orders on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]