HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	**10.10.2023**

Name of Builder	Raheja Developers Ltd
Project Name	Raheja's OMA, Sector 2-A Dharuhera(Rewari)

Sr. No.	Complaint No.	Complainants
1.	1543 of 2022	Ashok Khurana S/o Late Sh. Krishan Lal Khurana, R/o B-32, 2nd floor, Geetanjali Enclave, New Delhi- 110017.
2.	1560 of 2022	Mrs. Sudha Khurana W/o Mr. Ashok Khurana, R/o B-32, 2nd floor, Geetanjali Enclave, New Delhi- 110017.

Versus

Raheja Developers Ltd,

R/o W4D, 204/5, Keshav Kunj, Carippa Marg,

Western Avenue, Sainik Farms,

New Delhi- 110062. .....RESPONDENT

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

Present: - Sh. Vaibhav Prasad Advocate, Counsel for the complainants through VC in both cases.

None for the respondents

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of both 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 all complaints are more or less identical and relate to the same project of the respondent, i.e., "Raheja's OMA", Sector 2-A Dharuhera (Rewari), 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. Complaint no. 1543 of 2022 titled as "Ashok Khurana V/s Raheja Developers Ltd" has been taken as lead case for disposal of all captioned matters.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the unit and project in lead case have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Raheja's OMA, Sector 2-A Dharuhera(Rewari)
2.	Nature of the Project	Residential
3.	RERA registered/not registered	Registered no. 29 of 2017 dated 02.08.2017 and 30 of 2017 dated 02.08.2017
4.	Allotment date	05.07.2013
5.	Unit no.	IF 29-02
6.	Unit area	1904.28 sq.ft.and terrace/ court area 196.01 sq.ft
7.	Date of builder buyer agreement	05.07.2013
8.	Deemed Date of Possession as per clause 4.2 of BBA	Within 36 months from execution of BBA i.e. 05.07.2016 along with grace period of 6 months.
8.	Total sale price	₹67,84,649/-
9.	Amount paid by complainant	₹57,73,268/-

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

4. Complainant had booked unit in the promoter project in the year 2013. Said unit was allotted vide allotment letter dated 05.07.2013 and builder buyers agreement (hereinafter referred as BBA) was also executed on the same date i.e. 05.07.2013 between the allottees and respondent-promoter, copy of the same has been annexed as Annexure C-2 (Pg. 25-67 of complaint book)

5. According to clause 4.2 of the BBA, respondent committed to give possession of the allotted unit within 36 months from the date of the execution of the agreement to sell and after providing of necessary infrastructure specially road, sewerage, etc. by the government and subject to force majeure conditions or any government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. However, the seller shall be entitled for compensation free grace period of six months in case the construction is not completed within the time period mentioned above. Total sale price was Rs. 67,84,649/- out of which complainant had paid Rs. 57,73,268/- in the years from 2012-2016.

6. Complainant further alleged that there is no development at site and the project cannot be completed in near future. As possession of booked unit was to be handed over to complainant by 05.07.2016 along with grace period of 6

months but respondent after inordinate delay of almost seven years have failed to handover the possession till date. Therefore, complainants have prayed for relief of refund of the amount paid by complainants till date along with the prescribed rate of interest. Further, complainant has requested to dispose of the matter in terms of the Complaint no. 529 of 2018 titled as Kapil Jain and Anu Jain Vs Raheja Developers Pvt Ltd. passed by the Authority vide order dated 01.04.2022, whereby same relief was allowed.

C. RELIEF SOUGHT:

7. The complainants in their complaints have sought following reliefs:

i. Direct the respondent to refund the entire paid amount of ₹ 57,73,268/- along with interest paid in lieu of allotment of residential unit being –IF29-02 at Sansara Residence of the project in question.

ii. To maintain status quo in respect of booked residential unit bearing no. IF29-02.

iii. To direct the respondent to pay damages and compensation in favour of complainant and against the respondent on account of mental agony, trauma and litigation fees;

iv. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

8. Respondent has submitted short reply dated 25.04.2023 in the registry. Whereby respondent has challenged the maintainability of captioned complaint on following grounds:-

i) This Authority does not have jurisdiction to deal with the matter where in claim for possession of the flats with interest and compensation would be adjudicated by Adjudicating Officer appointed under Section 71 of HRERA Act 2016. No complaint can be entertained before Authority in respect of the matters to be adjudicated by the Adjudicating Officer.

ii) Authority further lacks jurisdiction because the project has not been registered with the Authority. Authority has jurisdiction to regulate the affairs only of the projects which are registered with Authority.

iii) Respondents have stated that agreement with the complainant-allottees had not been executed in accordance with the format of the agreement provided in the Rules. Further, Respondent has stated that agreement with the complainant-allottee 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 complainant 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.

iv) Further, in para 6 of reply respondent has referred to a judgment passed by Hon'ble Supreme Court in case of Bharti Knitting Co. Vs. DHL World-wide Courier (1996) 4 SCC704, wherein it is stated that a person who signs a document containing certain contractual terms is bound by such contractual terms.

v) Respondent in his reply has stated that Project "Raheja OMA" consist of low rise and high rise. The construction of low rise was complete in the year 2015, However, collaborators cancelled the GPA which was co-terminus with collaboration agreement and very basis for undertaking the construction. Due to this action of collaborator, respondent lost the engagement of contractor and applying for occupation certificate of the project in question. It is also mentioned that a Civil appeal no. 6853/2018 has been filed before Honble Supreme Court, wherein respondent has been directed to deposit sum of ₹ 6 cores in the registry. The said appeal is now referred to senior mediator vide order dated 11.01.2022. The subject matter involved in the said appeal is against the same respondent against which the instant complaint has been filed by the complainant before the Authority. Therefore, respondent requested to defer the captioned matter qua the Raheja's OMA project till final adjudication of Civil appeal pending before Hon'ble Supreme Court. Respondent stated that the project is in full swing and the delay was on account of non-sanction of necessary approvals by the competent authorities of the State Government and not providing external services like sewer, water etc.

vi) Lastly, respondent stated that complainant had made several defaults of payments without any justification and non- payment by complainants and other allotteess had put adverse effect on completion of the project and is also one of the reasons for delay in completion and handover of the possession. Further, respondent has also stated that as per Clause 4.2 of BBA, in case of Akasha Tower, the possession shall be handed over within 48 months plus 6 months grace period from the date of execution of agreement to sell.

E. ISSUES FOR ADJUDICATION:

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

F. OBSERVATIONS OF THE AUTHORITY:

10. The Authority has gone through the documents placed on record and observes that complainant had booked a unit no. IF 29-02, admeasuring 1904.28 sq.ft. and terrace/court area 196.01 sq.ft. in the real estate project being developed by promoter namely, "Raheja Developers Limited" located at Sector 2-A Dharuhera, Rewari, for total sale consideration of ₹ 67,84,649/-. Builder buyer agreement was signed on 05.07.2013 and complainant had paid an amount of ₹ 57,73,268/- 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 05.07.2016 along with grace period of six months. 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.

11. On the other hand, respondent had filed short reply, whereby maintainability of the captioned complaint was objected on the following grounds:

i) The complainant has sought relief of possession with interest and compensation which would not be adjudicated by Authority and only be adjudged by the Adjudicating Officer under Section 71 of RERA Act.

However, on perusal of the documents it is apparent that complainant has prayed for relief of refund as clearly mentioned at page no. 20 of the complaint book. Thus this objection raised by respondent is factually incorrect as explained above. Further, as complainant has sought relief of refund, Authority has complete jurisdiction to deal with the captioned complaint in view of judgment passed by the Hon'ble Apex Court in **"Newtech Promoters and Developers Pvt. Ltd versus State of UP and Ors." 2021-2022 (1) RCR (C) 357** and followed in the case of **"Ramprastha Promoter and Developers Pvt. Ltd. Verus Union of India and others" dated 13.01.2022 in CWP bearing number 6688 of 2021** wherein it has been laid down as under:

> *" 86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19*

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

Further, even if it is considered that respondent wished to state that complainant had sought main relief of possession along with compensation, then his contention with regard to relief of compensation has already been adjudicated upon in many cases by the Authority, as per principle laid down by Hon'ble Supreme Court of lndia 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,)**:

"wherein the Hon'ble Apex Court 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 litigation expenses."

ii) Respondent has contended that project in question is not registered with the Authority, therefore, it does not fall under jurisdiction of this Authority.

In this regard it is observed that the provisions of RERA Act 2016, are very much applicable to the unregistered project as well. This issue has already been dealt by the Authority in complaint case no. **191 of 2020 titled *'Mrs. Rajni & Mr. Ranbir Singh versus M/s Parsvnath 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."

With regard to status of project in question, it has already been clarified in number of earlier decided cases by the Authority wherein, it is clearly stated that project of respondent namely," Raheja OMA" had been got registered by the respondents vide registration No.29 and 30 of 2017 dated 02.08.2017. However, respondent in this case, is making contrary submissions to the facts that project is not registered. Therefore, respondent contention with regard to jurisdiction over unregistered project is rejected as same is both factually incorrect and legally not tenable.

iii) 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, respondent has 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."*

Further, 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 purposiveinterpretation 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.

12. 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 the present case, it is matter of fact that complainant had made payment of Rs. 57,73,268/- to the respondent and respondent was under an obligation to handover possession by 05.07.2016 along with grace period of 6 months (as per clause 4.2 of BBA). However, respondent in his reply at para 12 has alleged that time to deliver possession was 48+6 months from date of execution of BBA, in case of Akasha Towers that too said period will start only after the necessary infrastructure specially road, sewer, water etc. are provide in by Government. Thus, respondent denies the delay solely accured on part of respondent.

In this regard, Authority observes that complainant in captioned complaint has booked unit in "Sansara" Independent Floors, for which respondent itself in clause 4.2 of BBA has given time of 36 plus 6 months for delivery of possession to the complainant. Accordingly, the contention of respondent that 48 plus 6 months were granted to respondent to handover possession is factually incorrect. Further, respondent has failed to prove any other factor which lead to delay of project completion other than default committed by respondent-promoter itself. Furthermore, it is admitted fact that the respondent promoter has till date not handed 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. Respondent had nowhere in reply has challenged the payment made by complainant rather has submitted the same in reply filed in other complaints

with regard to same project of the respondent. Further, despite being granted adequate opportunity, respondent has failed to file/submit any documents in its defense to show that construction of the project is complete and occupation certificate has been received from the competent Authority. The innocent allottee who had invested his hard earned money in the project in the year 2013 with the hope to get a house cannot be forced/ compelled to wait endlessly for the unit, and specifically when there is no bonafide effort shown on part of the promoter to complete the project. Thus, present complaint is covered by the decision rendered on 01.04.2022 in complaint no. 529 of 2018 titled as Kapil Jain and Anu Jain Vs Raheja Developers Pvt Ltd. Thus, the Authority decided to dispose of the matter in terms of the above said complaint. Relevant part of order dated 01.04.2022 passed in Complaint No. 529 of 2018 is reproduced below for reference:

> "iii) *Next argument of respondents is that the project could not be completed on account of diversion of funds from RERA account by the financer M/s DMI Finance Pvt. Ltd. Here again respondents are severely contradicting themselves. On one hand they are stating that project is not registered, but in the same breath they are saying that M/s DMI Finance Pvt. Ltd. is taking away money from RERA Account of the project. Again respondents have failed to even check facts of the matter.*
>
> *iv) Regardless of above position, respondent-company has got loan of Rs.55 crores sanctioned, out of which admittedly Rs.33 crores have been disbursed. Nothing at all has been stated where this amount of Rs. 33 crores has been invested, and whether it has been invested in the project or invested somewhere else. They have not even stated what properties have been hypothecated against the loan.*
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> *Respondents have failed to submit quarterly progress and have not even submitted any certificate of Chartered*

Accountant that said loan which has been got sanctioned for the project has been invested on the project itself.
On the other hand admittedly however, money collected from complainants has not been invested on the project. Nothing at all has been stated as to how much money was collected from complainants and how much money has been invested. RERA Act mandates that at least 70% money collected from allottees is to be invested on development of the project.
v) As per provisions of RERA Act and Rules no lien could have been created on the RERA account. 70% of the money received from the allottees has to be invested on the project. The respondent promoters appears to have severely defaulted in respect of legal obligations cast upon them under RERA Act. They have got the project registered and have operated RERA account as per law, but respondents have created lien in favour of of M/s DMI Finance Pvt. Ltd. without even informing the Authority about it. It is a blatant illegality committed by the respondents which in fact amounts to breach of law and trust. The allottees had entrusted their money with the promoter with an expectation that the same will be invested in the project and their booked apartment will be delivered in time. The promoter on the other hand, dealt with the money so deposited by the allottee-complainants like its private money and allowed a lien to be created in favour of 3rd party.
vi) There appears to be a clear mismanagement of funds by the respondent. The project ought to have been completed with the help of Rs.33 crores raised by way of loan and the money contributed by complainant-allottees. Only a detailed forensic audit would reveal whether the money collected by way of loan and installments paid by the complainants have been invested in the project or the said money has been diverted towards other purposes.
Authority decides to send a copy of this order to the Project Section to initiate inquiry in the matter.
8) Respondents-promoters have not submitted any time-line as to when project is likely to be completed. They are only hiding behind bald technicalities like jurisdiction of the Authority to justify their utter failure in completing the project. Photographs of the projects presented by complainants clearly show that the project is at very preliminary stages. It is not possible to be completed in foreseeable future. Since nothing substantial is happening on the ground, the promoters are going to find it difficult to

> *arrange more money either from the allottees or from financers. In any case, respondent is in serious disputes with both of them.*
> *9) In such circumstances, when there is no hope of completion of project in foreseeable future, Authority is duty bound to allow relief of refund as prayed by complainants. Accordingly, Authority orders refund of entire amount paid by complainants along with interest".*

13. 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.

14. 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 refreneces:

> ***"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"."*

15. 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.

16. 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. 10.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

17. 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.

18. 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 10.10.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	1543-2022	57,73,268/-	59,35,690/-	**1,17,08,958/-**
2.	1560-2022	94,46,185/-	95,27,812/-	**1,89,73,997/-**

19. Further, complainant has sought relief for passing directions to the respondent-promoter to maintain status quo in respect of booked unit mentioned at page 21 of the complaint book at clause C. In this regard it is observed that said relief has nowhere been claimed by the complainant in his complaint nor pressed during arguments. Hence, complainant prayer mentioned at clause C of complaint book is rejected.

G. DIRECTIONS OF THE AUTHORITY

20. 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 as specified in the table provided in para 23 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.

21. Captioned complaints are, accordingly, **disposed of.** Files be consigned to the record room after uploading orders on the website of the Authority.

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DR. GEETA RATHEE SINGH
[MEMBER]

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NADIM AKHTAR
[MEMBER]