HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1113 of 2023**
Date of filing:	**11.05.2023**
Date of first hearing:	**27.07.2023**
Date of decision:	**09.11.2023**

1. Sh. Ajit Sharma S/o Sh. Krishan Murari Sharma,
2. Mrs. Suman Sharma W/o Sh. Ajit Sharma

Both R/o House no. 898,

Sector-17B, Iffco Colony,

Gurugram- 122001

....COMPLAINANTS

VERSUS

Parsvnath Developers Ltd. through its Managing Director

Office: Parsvnath Tower, Near Shahdara Metro Station,

Shahdara, Delhi- 110032 ....RESPONDENT

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

Present: Sh. Shubham, learned counsel for the complainant through VC

Sh. Narender Kumar Rana, learned counsel for the respondent

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 11.05.2023 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Pleasant, Dharuhera, Rewari'
2.	RERA registered/not registered	Un-registered
3.	DTCP License no.	129 to 132 and 134-138 of 2007 dated 03.03.2007
4.	Date of application/ first payment by present complainants	05.07.2013
5.	Flat no.	1102, tower-11

6	Flat area	1855 sq.ft
7.	Date of builder buyer agreement/AL	03.08.2013
8.	Deemed date of possession as per clause 10(a)	36 Months from date start of foundation of particular tower with 6 months grace period
9.	Basic sale price	₹51,10,525/-
10.	Amount paid by complainant	₹17,12,659/-
11.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Sh. Satish Kumar, original allottee purchased a plot measuring 400 sq.yrds at rate of ₹ 5,750/- in project, Parsvnath City, Sonipat on 21.02.2005 by paying an amount of ₹ 11,50,000/-. In October 2006, Mrs. Rekha Devi Sharma(Mother of complainant no.1) had purchased the said plot from original allottee and same was endorsed in favour of Mrs. Rekha Devi Sharma on 05.10.2006. Original allottee handed over 2 original receipts amounting to ₹ 5,75,000/- dated 21.05.2005 and ₹ 5,75,000/- dated 24.01.2006 to Mrs. Rekha Devi Sharma. After endorsement of said plot in name of Mrs. Rekha Devi Sharma, respondent had failed to issue allotment letter to her till year 2013. Mrs. Rekha Devi Sharma sent letters on 08.05.2013 and 05.07.2013 to

respondent for enquiring about allotment and status of plot but respondent never replied to the same.

4. Now, both complainants in captioned complaint were approached by sale representative of respondent and were convinced to invest in project "Parsvnath Pleasant" for booking a residential flat. Complainants have paid an amount of 5000/- on 05.07.2013 as booking towards Flat no. 1102. Respondent had transferred and adjusted total amount paid by Mrs. Rekha Devi of ₹ 16,89,938/- in account of present complainants towards booked flat no. 1102, Tower-11. Receipt for transfer was duly issued by respondent on 10.07.2013. Thereafter, builder buyer agreement (hereinafter referred as BBA) was executed between respondent and present complainants on 03.08.2013 towards purchase of Flat no. 1102 having area of 1855 sq.ft for basic sale consideration of ₹ 51,10,525/-. Complainants had alleged in para B.10 of complaint book that as per clause 10(a) of BBA, due date for handing over possession of flat comes to 05.07.2016 (36 months from date of booking of flat). Complainants have stated that they had paid an amount of ₹ 17,12,659/- till March 2014 to respondent but respondent had failed to deliver possession to complainant even after delay of 6 years and 8months from date of possession.

5. Further, complainants have stated in para B.12 that at present only 10 % of construction work is complete at project site and it appears that project

has been completely abandoned. Even respondent had failed to get the renewal of licenses obtained from the concerned department. That, due inordinate delay in possession the complainants have filed the captioned complaint seeking relief of refund.

C. RELIEF SOUGHT

6. The complainants in their complaint have prayed that the respondent be directed to:

(a) To refund the full deposited money paid by complainants amounting to ₹ 17,12,059/- with interest from the date of deposits till its actual realization at the rate prescribed by the Act, 2016.

(b) To direct the respondent to pay ₹1,00,000/- to pay legal expenses incurred by the complainants.

(h) Any other damages, interest and relief which this Hon'ble authority deems fit be passed in favour of complainants.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 08.08.2023 pleading therein:

7. That, the present complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim.

8. 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.

9. Respondent has stated that agreement with the complainants-allotteess 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 as Act cannot be applied retrospectively.

10. That, on 10.07.2013, complainants have booked a residential flat bearing no. T-11-1102 of area admeasuring 1855 Sq.ft in respondent project namely, "Parsvnath Elite Floors" Dharuhera, Haryana' at basic sale price of ₹51,10,525/- after availing discount of ₹ 2,68,975/-. Further, complainants in the complaint nowhere has challenged the terms and conditions of BBA, therefore, are bound by the same. Complainants have deposited an amount of ₹ 17,12,059/- with respondent till date. Copy of BBA is annexed as Annexure R-1 with the reply.

11. Respondent had stated that interest of complainants have been duly protected in terms of clause 9(C) of BBA, whereby in case of delay in possession beyond the period stipulated, subject to force majeure and

other circumstances as mentioned in clause 9(a), respondent shall pay to buyer compensation @ Rs. 5/- per sq.ft. of super built up area of flat per month for period of delay.

12. 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. Further, respondent has also applied for renewal of license, however same is pending before the DTCP, Haryana. It has been submitted that all the development work in the project related to infrastructures and basic facilities 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 has already been arranged for the allotees who have been residing. On 25.05.2016, Office of Senior Town Planner (STP), Gurgaon 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.

13. 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, respondent is willing to offer an

alternative property subject to mutual consent of the complainants and respondents and availability of units in alternative projects. Furthermore, respondent submitted that there is no intentional delay on part of respondent and project has been delayed for the reasons beyond the control of respondent company. Lastly, as stated above also that basic infrastructure facilities have been developed in the project and number of families have been residing happily therein, so it is not an abandoned project. Hence, claim of complainants is not maintainable.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments learned counsel for the complainants as well as respondent M/s Parsvnath Developers Ltd. reiterated arguments as were submitted in writing. Learned counsel for respondent further stated that basic infrastructure and facilities have already been developed at site and number of families have been residing happily. Therefore, this is not an abandoned project. Respondent is trying to complete the remaining project and make offer of possession of units to allottees. She further stated that allowing refund at this stage will jeopardize progress of the project.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

16. The Authority has gone through the rival contention and the documents placed on record. It is admitted fact that the complainants booked a flat, admeasuring 1855 sq.ft. in the real estate project, namely, "Parsvnath Pleasant", being developed by promoter namely, "Parsvnath Developers Limited" located at Dharuhera, Rewari, for total sale consideration of ₹ 51,10,525/-. It is also admitted that builder buyer agreement was signed on 03.08.2013 and complainant had paid an amount of ₹ 7,12,659/- against the total sale consideration.

In the present case, the complainants have alleged that the respondent had promised to deliver the possession of the flat by 05.07.2016 (36 months from date of booking). 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 them.

17. On the other hand, respondent has objected to the maintainability of the complaint on following grounds:

i. Respondent has stated that captioned complaint is barred by limitation. In this regard Authority has referred to the judgment of Apex Court passed in **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise.** Wherein the Hon'ble Supreme Court had held that:-

"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 allotees 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.

ii. Another averments of the respondent is that Authority has no jurisdiction to hear the present complaint as it pertains to un-registered project of the

respondent. 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 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.*
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> *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."

Thus, plea of respondent regarding rejection of complaint on ground of jurisdiction stands rejected.

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, 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 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."*
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> *"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."

Now, there is no ambiguity with respect to the fact that 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.

18. 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 10(a) of agreement for sale dated 03.08.2013, "*Construction of the flat is likely to be completed within a period of 36 months from the date of start of foundation/ particular tower in which flat is locate with a grace period of 6 months, on receipt of sanctioning of building plans/revised building plans and approvals of all concerned authorities including the Fire Services Deptt, Civil Aviation Deptt etc, as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/ authorities etc. and circumstances beyond control of the developer and subject to timely payments by the flat buyers.*" Here it is pertinent to mention that no exact date for start of foundation of particular Tower has been provided by either of the parties. Nonetheless, the complainants in the complaint have alleged that the respondent promoter was obligated to handover possession of the flat by 05.07.2016(i.e. 36 months from date of booking). This deemed date i.e. 05.07.2016 to hand over possession has not been particularly disputed/ denied by the respondent/promoter in its reply. However, it has been alleged that due date of possession was tentative and subject to various other conditions such like force majeure but till date respondent has failed to prove any force majeure. 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. 05.07.2016 (36 months from date of booking of flat) shall be considered as deemed date of possession. However, Authority is of the view that once BBA is executed between parties, the rights and duties should be determined in terms of BBA only. Therefore, it is presumed that deemed date of possession could be concluded as per clause 10(a) i.e. 36 months plus 6 months grace period, which comes to 03.02.2017. Further, it is a matter of fact that the respondent promoter has till date neither 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.

19. Further the respondent in para 5(h) and 10 of the reply had admitted that the project in question 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 Haryana Real Estate Regulatory Authority, Panchkula being an ongoing project. However, their license has not been renewed till date. In project

jurisdiction, this Authority has passed following order dated 22.03.2021 vide Temp Id, RERA-PKL- 104-2018:

> "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.
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> 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.
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> 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.
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> 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 arrange 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."

20. It is apparent from the fact of the case that there has been an inordinate delay of more than 6 years in handing over the possession of the flat to complainants. Also, there is no hope that the respondent would be able to handover the possession in near future. When allottee purchases a flat 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.

21. Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others** " 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*

Rattee

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.

22. 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"."*

23. 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.

24. 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%.

25. 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 of ₹17,12,059.25/- 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. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order i.e. 09.11.2023 and said amount works out to(₹17,12,059.25/- + ₹19,02,295/- = ₹ **36,14,354.25/-**) as per detail given in the table below:

S.No.	Principal Amount	Date of payment/ transfer	Interest Accrued till 09.11.2023
1.	₹16,89,938.25/	10.07.2013	₹/18,78,899/-
2.	₹ 5000/-	05.07.2013	₹/-5566/-
2.	₹17,121/-	06.03.2014	₹/-17,830/-

Total	**₹17,12,059.25/-**		**₹19,02,295/-**

26. The complainants are seeking ₹ 1,00,000/- as litigation cost. It is observed that 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,), 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 amount of **₹36,14,354.25/-** to the complainants.

(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. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.

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NADIM AKHTAR
[MEMBER]

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Dr. GEETA RATHEE SINGH
[MEMBER]