



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2191 of 2022
Date of filing.:	22.08.2022
First date of hearing.:	14.10.2022
Date of decision.:	20.09.2023

Deepak Kumar Tyagi S/o Mahender Pal Tyagi
R/o H.no-JC-V2, 2nd Floor, Ruri construction
VIP Floors, Sector-81,
Kheri Kalan(113)
Faridabad, Haryana- 121002

....COMPLAINANT

VERSUS

BPTP Limited
28 ECE House, 1st Floor, KC Marg,
Connaught Circus, New Delhi- 110001

....RESPONDENT

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

Nadim Akhtar **Member**

Present: - Mr. Deepak Kumar Tyagi, Complainant through VC
 Mr. Hemant Saini, Counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil 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 project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park-81, Parklands, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	VL1-12-GF, measuring 1402 sq. ft
6.	Date of floor buyer agreement	19.06.2012



7.	Due date of possession	19.06.2015
8.	Possession clause in BBA (Clause 5.1)	<p>Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of thirty six (36) months from the date of execution of floor buyer agreement or sanction of building plan, whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty six (36) months,</p>



		for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).
9.	Basic sale consideration	₹ 33,63,006/-
10.	Amount paid by complainant	₹ 30,11,230.43/-
11.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that a unit had been booked in the project of the respondent namely "Park-81, Parklands" situated at Faridabad, Haryana by the original allottee Mr. S. M Soni, in the year 2009, by paying a booking amount of ₹ 3,00,000/-. Complainant had purchased the booking rights from the original allottees vide agreement to sell dated 16.01.2010,



placed at page 34 of the complaint file. The endorsement in the name of the complainant was acknowledged by the respondent vide nomination letter dated 10.02.2010, placed at page 32 of the complaint file. Vide allotment letter dated 09.04.2010, complainant was allotted unit no. VL1-12-GF, measuring 1402 sq. ft. Park-81, Parklands, Faridabad. A copy of the allotment letter issued by the respondent placed at page 37 of the complaint file. A floor buyer agreement qua the said unit was executed between both the parties on 19.06.2012. A copy of the floor buyer agreement issued by the respondent placed at page 45 of the complaint file. As per clause 5.1 of the agreement, possession of the unit was to be delivered within a period of 36 months from the date of sanction of the building plan or execution of the floor buyer's agreement, whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate from the competent Authority. As per 36 months from the date of execution of the agreement, the deemed date of possession works out to 19.06.2015. The basic sale price of the unit was fixed at ₹ 33,63,006/- against which the complainant has paid a total amount of ₹ 30,11,230.43/- till 10.09.2018. That even after a lapse of more than 7 years from the deemed date of possession, respondent is not in a position to offer possession of the unit to the complainant.



4. It is submitted that the complainant has never defaulted in making payment towards any instalment as per the demand raised by the respondents from time to time. Further that from booking of the unit till date, the respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondent and has led to delay in completion and development of the project within the time prescribed.
5. The respondent was bound by the provisions and terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondent has miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects.
6. That in case of delay in construction and development, the respondent had made the provision of only Rs 5 per sq of the super built up area per month as compensation to the purchaser in the agreement whereas in case of delay in payment of instalments by complainant, it had provided for the delay penalty @ 18% interest compounded quarterly. The complainant is aggrieved by such unilateral construction of the agreement as Rs 5 per sq ft is 2-3% and is thus too less compared to the exorbitant 18% rate of interest.
7. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with

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

C. RELIEF SOUGHT

8. That the complainant seeks following relief and directions to the respondent:-

- i. Direct the respondent to pay complainant the delay compensation charges as per prevailing Rule 15 of HRERA Rules 2017,
- ii. Direct the respondent to complete pending work, handover the possession of the floor and execute the conveyance deed in favour of the complainant.
- iii. Direct the respondent to pay the complainant ₹ 8,00,000/- for mental agony/harassment and for deficiency of service and ₹ 50,000/- towards cost of legal expense.
- iv. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act,2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.

9. During the course of hearing, Mr. Deepak Kumar Tyagi, complainant submitted that as per the latest submission of the respondent, the unit in question is incomplete and not ready for handover of possession.

Complainant is ready and willing to wait for possession of the unit after completion of all development works as per the terms and condition of the floor buyer agreement and grant of occupation certificate. He prayed that direction be issued to the respondent to deliver possession of the unit complete in all respects after obtaining occupation certificate and along with delay interest for delay caused in delivery of possession as per Rule 15 of the HRERA Rules 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

10. Learned counsel for the respondent filed detailed reply on 05.06.2023 pleading therein:
11. It is submitted that the unit in question was booked by original allottee in the year 2009 and later sold to the complainant vide agreement to sell dated 16.01.2010. On joint request of the original allottee and complainant, the unit was endorsed in the name of the complainant on 10.02.2010. On 09.04.2010, respondent duly allotted a unit bearing no. VL1-12 on the ground floor to the complainant. That, thereafter a floor buyer agreement was executed between both the parties on 19.06.2012. Respondent has admitted allotment and execution of floor buyer agreement in favour of complainant. It is stated that in terms of floor buyer agreement, respondent proposed to handover the possession of the unit within a period of 36 months from the execution of floor buyer


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agreement or sanction of building plan, whichever is later along with a grace period of 180 days for filing and grant of occupation certificate. The delay caused in handing over of possession is due to circumstances beyond the control of the respondent i.e the force majeure conditions.

12. That builder buyer agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
13. The project "Park 81, Parklands" has been marred with serious defaults and delays in timely payment instalments by majority of customers. Hence the proposed timelines stood diluted. Further, the construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority etc. Further, the construction of the project had been marred by the COVID-19 pandemic whereby the government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondent which continued upto the year 2021.

That due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondent, the construction got delayed. Since the construction activity suddenly came to a halt, after lifting of the ban it took some time for mobilisation of resources by various agencies employed with the respondent. That thereafter, despite hardships and the force majeure encountered by the respondent, the respondent company has managed to complete construction of the unit in terms of the floor buyer agreement.

14. During the course of hearing, learned counsel for the respondent submitted that the respondent is not in a position to issue a valid offer of possession as the unit in question is yet to receive an occupation certificate. Learned counsel for the respondent offered to refund the paid amount along with interest @ 9% which was outrightly denied by the complainant. Complainant submitted that he is ready to wait for the possession of the unit after completion of occupation certificate along with delay interest admissible in terms of Rule 15 of HRERA Rules 2017. In view of the statement of the complainant, learned counsel for the respondent submitted that if the complainant is willing to wait for the occupation certificate, then respondent will issue an offer of possession to the complainant after receipt of the same. He further argued that the timely payment discount offered by the respondent on payments made within the time frame is a genuine act of good will on the part of the


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respondent and the same should not be considered as a part of total payment made by the complainant. The delay interest admissible to the complainant should only be calculated on the actual paid amount excluding the timely payment discount as the same is not actual money which has been utilised by the respondent.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

E.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the

terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

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

Further, as per recent judgement of Hon’ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the



competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

E.II Objection raised by the respondent regarding with regard to deemed date of possession .

As per clause 5.1 of the floor buyer agreement dated 19.06.2012 possession of the unit was to be delivered within a period of thirty six (36) months from the date of execution of floor buyer agreement or sanction of building plan whichever is



later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate from the competent Authority. If 36 months are considered to start from the date of execution of the agreement, the deemed date of possession works out to 19.06.2015. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. Further, the respondent too in its reply has not denied that the deemed date of possession shall start from the date of execution of the builder buyer agreement. In fact, there is also no mention of any date for sanction of the building. Here, the Authority also deems appropriate that respondent has made endorsement in the name of the complainant on 10.02.2010 and took more than two years to execute builder buyer agreement. Thus the respondent cannot be allowed to take advantage of a vague and arbitrary drafting, and the deemed date of possession shall be


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computed from the date of execution of the builder buyer agreement. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e immediately after completion of construction works within 36 months. Thus, the period of 36 months expired on 19.06.2015. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

E.III Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 5.1 is 19.06.2012, therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether



the said situation or circumstances was in fact beyond the control of the respondent or not. The obligation to deliver possession within a period of 36 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2015 and the NGT order referred by the respondent pertains to year 2016 i.e post the deemed date of possession, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr.*



bearing OMP (1) (Comm.) No. 88/2020 and I.A.s

3696-3697/2020 dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used as an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

Moreover, the respondent has not given any specific details with regard to delay in payment of instalments by many allottees. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

E.IV Objection raised by the respondent regarding consideration of timely payment discount at the time of calculation of interest.



Complainant in this case had purchased a unit in the project of the respondent in the year 2010 for a basic sale consideration of ₹ 33,63,006/- against which the complainant has claimed to have paid an amount of ₹ 30,11,230.43/-. Upon perusal of receipts it is observed that out of said amount, complainant has actually paid an amount of ₹ 28,94,597/- and has received a credit of ₹ 1,16,633.43/- from the respondent as timely payment discount for making scheduled payments on time. This facility has been provided by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. Now it is the contention of the respondent that timely payment discount offered by the respondent on payments made within the time may not be considered as part of the actual payment for the purpose of calculation of interest admissible to the allottees.

The main point of contention between both the parties is with regards to admissibility of interest to the complainant for the amount credited as timely payment discount. Upon bare perusal of the various demand letters issued by the respondent, it is observed that vide said demand letters respondent has time and

again raised demand from the complainant towards payment of balance sale consideration. In said demand letters it has been specifically mentioned by the respondent builder that complainant will receive a timely payment discount if a payment is made within the time frame mentioned in the demand letter. Taking demand letter dated 20.03.2013, at page 99 of the reply, under observation; in said letter respondent has raised a demand of ₹3,76,146.54-. In said letter it has been clearly mentioned that in order to avail timely payment discount of ₹ 16,641.23/-, complainant has to clear the total dues of ₹ 359,595.31/- before 04.04.2013. Upon making payment of ₹ 359,595.31/- within the requisite time frame, complainant received the promised timely payment discount of ₹ 16,641.23/ and received a receipt dated 02.04.2013 for full amount of ₹ 3,76,147.23/-, a copy of which is annexed at page 69-71 of the complaint. From these documents placed on record, it can be deduced that the respondent company used the payment method of timely payment discount as a company policy to ensure payment from the allottees within the requisite time frame. As a benefit, the said discount was credited towards the total sale consideration made by the complainant and was an essential component in determining the balance payable

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amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainant. Although it is true that this discount is an act of good will on the part of the respondent but complainants cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainant cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondent.

15. Admittedly, in this case a unit had been booked by the original allottee Mr. S. M Soni, in the project of the respondent in the year 2009. Complainant had purchased the booking rights from the original allottees vide agreement to sell dated 16.01.2010 and the same was acknowledged by the respondent vide nomination letter dated 10.02.2010. Vide allotment letter dated 09.04.2010, complainant was allotted unit no. VL1-12-GF, measuring 1402 sq. ft. Park-81, Parklands, Faridabad. A floor buyer agreement qua the said unit was executed between both the parties on 19.06.2012. As per clause 5.1 of the agreement, possession of the unit was to be delivered within a period of 36 months from the date



of sanction of the building plan or execution of the floor buyer's agreement, whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate from the competent Authority.

16. As per clause 5.1 of the agreement and the observations as recorded in subheading 'E-II' of this order, possession of the unit should have been delivered by 19.06.2015. It is an admitted fact that the delivery of possession of the unit has been delayed by the respondent by more than 7 years from the deemed date of possession as per the agreement entered between the parties. Learned counsel for respondent orally submitted during hearing proceedings that the respondent company is yet to receive occupation certificate in respect of the unit of the complainant. Complainant is willing to wait for possession of the unit till the receipt of occupation certificate and is further claiming delay interest for the delay caused in delivery of possession.
17. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement. The Authority observes that the respondent has failed to fulfil its obligation stipulated in floor buyer agreement dated 19.06.2012. Possession of the unit should have been delivered by 19.06.2015. Even at present, respondent is not in a position to offer possession of the unit since respondent company has yet to


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receive occupation certificate in respect of the unit. Fact remains that respondent in his written statement has not specified as to when possession of booked unit will be offered to the complainant. Complainant, however, does not wish to withdraw from the project and is rather interested in getting the possession of his unit. Mr. Deepak Kumar Tygai, complainant, has clearly stated that he is ready to wait for possession of the unit after completion of construction and receipt of occupation certificate. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e, 19.06.2015 up to the date on which a valid offer is sent to him after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (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”..”

18. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short

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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%.

19. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession 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 from the due date of possession i.e 19.06.2015 till the date of a valid offer of possession.

20. Authority has got calculated the interest on total paid amount from due date of possession i.e 19.06.2015 till the date of this order i.e 20.09.2023 which works out to ₹ 26,70,084/- and further monthly of ₹26,606/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 20.09.2023 (in ₹)
1.	29,80,569.43/-	19.06.2015	26,47,562/-
2.	30,661/-	22.11.2016	22,522/-
Total:	30,11,230.43/-		26,70,084/-
Monthly interest:	30,11,230.43/-		26,606/-

21. Vide present complaint, complainant is also seeking compensation to the tune of ₹. 8,00,000/- on account of mental agony and harassment and

for deficiency of service and ₹ 50,000/- towards cost of legal expense. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

22. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of ₹ 26,70,084/- (till date of order i.e 20.09.2023) to the complainant towards delay already caused in handing over the



possession within 90 days from the date of this order and further monthly interest @ ₹ 26,606/- till the offer of possession after receipt of occupation certificate.

(ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to her.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

(iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

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


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NADIM AKHTAR
[MEMBER]


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DR. GEETA RATHEE SINGH
[MEMBER]