



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2885 of 2022
Date of filing:	03-11-2022
First date of hearing:	15-03-2023
Date of decision:	21-09-2023

Rakhi Mittal

W/O Sanjay Mittal,

House no. 24, Geeta Colony Panipat, Haryana -13210COMPLAINANT

Versus

1.Astrum Value Homes Private Ltd through its Managing Director
Registered office at 10th floor, C Wing, JMD Megapolis, Sohna Road,
Sector-48, Gurgaon, Haryana

2.Stanza Developers and Infrastructure Private Limited through its
Managing Director
Registered office at 189, Tarun Enclave, Pitampura, Delhi-110034

3. ICICI Bank through its authorised representative
Registered office ICICI Towers, Bandra Kurla Complex
Mumbai-400051

.....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - Ms. Rupali Verma, Id counsel for the complainant through VC.
Mr. Shobit Phutela, Id counsel for the respondent no.1 and 2
through VC.
Mr. Atul Goyal, Id counsel for the respondent no.3.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed on 03-11-2022 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 handing over of the possession, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	La Regencia
2.	Name of the promoter	Astrum Value Homes Private Limited and Stanza Developers and Infrastructure Private Limited



3.	RERA registered/not registered	Registered (Lapsed Project)
4.	Unit no.	G-702,7th floor, Tower Galleon in "La Regencia"
5.	Unit area	Super area of 1693 sq. feet
6.	Date of allotment	31.05.2013
8.	Date of builder buyer agreement	17.10.2014
9.	Due date of offer of possession	17.04.2017
10.	Possession clause in BBA	<i>clause 4.1: Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of said building/said apartment not later than 30 months from the date of execution of this Agreement unless there is delay or failure due to reasons mentioned in clause 3.4 and 3.5 or due to failure of the Allottee to pay in time the price of the Said Apartment along with all other charges and dues in accordance with Schedule of Payments or as per demands raised by the Company from time to time or any failure on the part of Allottee to abide by any of the terms and conditions of this Agreement."</i>
11.	Total sale consideration	₹54,17,600/-
12.	Amount paid	₹44,53,450/-

	by complainant	
13.	Offer of possession (fit-out)	No

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that the complainant applied for a unit on 03.11.2012, in the project floated by the respondents and paid Rs.4,00,000/- towards the booking amount. The total basic price of the unit was agreed at Rs.54,17,600/-.
4. That on 31.05.2013, the complainant was allotted 3BHK apartment bearing unit No. G-702, having an approximate super area of 1693 sq. feet located on the 7th floor of tower Galleon in "La Regencia" project floated by Respondents in Sector-19, Panipat, Haryana. Allotment letter dated 31.05.2013 is annexed as Annexure C-1.
5. That as per the allotment letter dated 31.05.2013, the basic sale price of the unit was Rs.54,17,600/- calculated at the rate of Rs.3200.00 per square feet of the super area of the apartment. It was categorically mentioned in the allotment letter that the respondents shall be entitled to charge interest @ 18% per annum at the time of every succeeding installment from the due date of instalment, as per the schedule of payment till the date of payment.
6. As per clause 'P' of the allotment letter dated 31.05.2013, the possession was to be offered within 30 months from the date of execution of



apartment buyer's agreement, which in the present case is 17.10.2014, meaning thereby, the possession was promised to be offered by 17.04.2017.

7. That after the issuance of allotment letter dated 31.05.2013, and payment of Rs. 4,00,000/- at the time of booking, the respondents raised other illegal demands of Rs.11,17,002/-, which constituted almost 27 percent of the total sale basic price of the apartment. The illegal demands raised by the respondents were duly paid under the pressure created by them on the complainant but the respondents failed to execute apartment buyer's agreement. True copies of demand letters dated 13.10.2014 & 14.10.2014 are annexed herewith as Annexure C-2 & Annexure C-3 respectively
8. That despite payment of 27% of the total sale consideration, respondents failed to execute buyer's agreement and on 17.10.2014, that is, after almost 2½ years, apartment buyers agreement was executed between the parties.
9. That as per the terms and conditions of the executed buyer's agreement it was reiterated that as per clause 4.1 possession will be offered within 30 months of the execution of the apartment buyer's agreement which is nothing but deficiency of service on behalf of respondents. A true copy of the buyer's agreement dated 17.10.2014 is annexed as Annexure C-4.

10. That clause 1.17 of the apartment buyer's agreement inter alia, stipulates that the respondents are entitled to charge 18% interest on the delayed payments/ sale consideration, whereas, as per clause 4.5 of the agreement, in case the company is unable to develop the project within the agreed period of 30 months, it is liable to pay a nominal compensation of Rs.5 per sq. ft. per month for the delayed period. That the aforesaid conditions are unilateral and arbitrary and the respondents have failed to develop the project and are misusing unilateral and one-sided terms of the buyer's agreement to harass the complainant. Therefore, the complainant is entitled to same rate of interest for delay period in handing over of the physical possession of the apartment.
11. That on 17.10.2014, the complainant availed a housing loan of Rs.50 lakh from respondent no. 3, i.e., ICICI Bank and a tripartite agreement dated 17.10.2014 was executed between the complainant, respondent no.1 & 3. A true copy of the tripartite agreement dated 17.10.2014 is annexed as Annexure C-5.
12. That the complainant took disbursement of Rs.40,53,450/- which was paid to the respondents towards the sale consideration but it is a matter of record that the construction at the site was not proportionate to the payments made under the construction linked plan, as agreed under the apartment buyer's agreement dated 17.10.2014.



13. That on 24.06.2020, the complainant sent a legal notice to the respondent no. 1 & 2 followed by reminder dated 26.01.2022 for the possession and delayed possession interest but the respondents have failed to reply to the legal notice(s) sent by the complainant which establishes the deficiency in services and malpractices adopted by the respondents. True copy of legal notice dated 24.06.2020 and reminder to legal notice dated 26.01.2022 are annexed as annexure C-6 and C-7 respectively.
14. That after 2017, i.e., after the due date of possession, the complainant kept asking for the possession as she was in the dire need of the accommodation for her family and herself but the respondents never paid any heed to the requests made by the complainant.
15. That as per the payment plan agreed between the parties, the complainant has made all the payments as per the schedule attached as annexure-III of the apartment buyer's agreement. Despite making all the payments as per the demands raised by the respondents, the respondents failed to adhere to the promised construction linked plan. True copies of demands raised by the respondents are annexed herewith as Annexure C-8(Colly).
16. That complainant till date had paid an amount of Rs.44,53,450/- that is, 85% towards the total consideration of the unit but the respondents have failed to adhere to the promised date of delivery of possession. That the



balance sale consideration is to be paid at the time of possession and the respondents till date have not offered the possession of the unit to the complainant.

17. That as per clause 4.1 of the buyer's agreement the respondents had promised that the possession of the apartment shall be offered within a period of 30 months from the date of execution of apartment buyer's agreement. The said period of 30 months is to be reckoned from 17.10.2014 that is, when the booking was done and not from the date of buyer's agreement. Without prejudice, the due date of possession of the apartment as per the executed buyer's agreement comes out to be 17.04.2017 which has also expired.
18. That recitals as per clause 7.1 and 4.5 in the buyer's agreement proves that respondents were never willing to honour their commitments and have acted in a pre-planned manner to dupe the innocent buyers like complainant of her hard-earned money.
19. Complainant is paying hefty interest on the loan availed by the complainant. True copy of Loan Account Statement issued by the respondent no.3 and the Interest Certificate issued by respondent no. 3 for the financial year April 2021 to March 2022 and April 2022 to march 2023 are annexed as Annexure C-9 and Annexure C-10, respectively.



20. That it has come to the knowledge of the complainant that respondents has floated the project without obtaining necessary approvals from the statutory authorities and such act on the respondents clearly deserves strict penal action against them.
21. That the cause of action to file the present complaint is continuous as the respondents have failed to offer the possession till date.

C. RELIEF SOUGHT

22. Complainant sought following relief :
- i. That respondents be directed to forthwith deliver the possession of the developed unit as per the terms and conditions of the Apartment Buyer's Agreement.
 - ii. That respondents be directed to pay interest at the rate of 18% per annum on the amounts deposited with the respondents from the due date of possession till the actual handing over of the possession in terms of Section 31 of the Real Estate (Regulation and Development) Act, 2016.
 - iii. That respondents be directed to pay compensation of Rs.20,00,000/- for causing immense harassment, mental agony and undue hardships suffered by the complainant or in the alternative this Hon'ble Authority may kindly refer the claim for compensation to the Appropriate Forum/ Authority in accordance with law.



- iv. That respondents be further directed to refund the interest of Rs.29,64,000.00 paid by the Complainant towards the loan availed from the financial institutions.
- v. That respondents be directed to compensate the Complainant for Rs.3 Lacs towards the rent paid by the Complainant from the date when the possession of the unit got due i.e.19.04.2017.
- vi. The complaint be allowed with costs and litigations expenses of Rs.2.00 lacs.
- vii. Declare the terms and conditions of the apartment buyers agreement as null and void to the extent the same are in conflict with model agreement for sale provided by the Haryana Real Estate (Regulation and Development) Rules, 2017 and/ or read the terms and conditions of the model agreement into the unit purchase agreement in terms of the law laid down by the Hon'ble Supreme Court in Newtech's Case.
- viii. To pass any order and/or relief in favour of complainant as the Hon'ble Authority may deem fit and appropriate in the interest of justice.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.1
AND No.2**

23. One common reply has been filed on behalf of respondent no.1 and respondent no.2 on 16.03.2023 wherein it is stated that complaint under reply is not maintainable before this Ld. Authority and therefore same is liable to be dismissed. That the apartment buyer's agreement entered



into between the complainant and respondent no.1 and 2 was executed in the year 2014, i.e., more than 2 years before the Real Estate (Regulation and Development Act), 2016, hereinafter referred as RERD Act, came into force. Therefore, provisions of RERD Act are inapplicable to the present agreement. The RERD Act cannot be said to have retrospective application and impose limits, retrospectively.

If it is held that RERD Act is applicable to the present case, and the Ld. Authority asserts jurisdiction in the matter, the adjudication of rights and obligations of parties must to be done within the four corners of the terms and conditions agreed upon by the parties in the apartment buyer's agreement, as firstly, the buyer's agreement was entered into between the parties consciously and with free will and secondly, because the buyers' agreement was entered into prior to the RERD Act coming into force. That the RERD Act, has been made fully operational with effect from 1st of May 2017. In the State of Haryana, Haryana Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 28.07.2017. Any new enactment of Laws are to be applied prospectively as held by the Hon'ble Supreme Court in catena of judgments. In the matter of "*CIT vs. Vatika Township (P) Ltd*", it has been held that the new legislation ought not to change the character of any past transactions carried out upon the faith of the then existing law. In fact, it is a well settled law that the retrospective



operation of statute may introduce such element of unreasonableness as was held in "*State of WB vs. SC Bose*" [1954SCR 5787] and "*Express Newspapers P Ltd vs. UOI*" [1959 SCR 12]. Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively and accordingly no action can be lawfully initiated for anything before the Ld. Authority related to period prior to registration of the project under the RERD Act. That the provisions of the RERD Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of the provisions of the RERD Act.

24. That the present complaint is liable to be dismissed as the complainant has not come before this Authority with clean hands, as complainant has not disclosed the complete set of facts and has concealed that complainant, at multiple occasions, defaulted in making timely payments. A copy of ledger of complainant is attached as Annexure-R-2.
25. That, complainant kept silent for the entire period of delay and did not seek relief right at the outset. It was only when the respondents restarted the construction of the project and raised further demands from the allottees that the complainant chose to file the present case before this Ld. Authority seeking, inter alia, relief of refund of amount



paid. The conduct of the complainant does not entitle him to any relief from this Ld. Authority.

26. Further, the complainant herein is a speculative investor and it is only due to slump in the market conditions that complainant has been unable to pay the outstanding demands and has hence filed the present complaint.
27. That the Authority while adjudicating the captioned complaint has to consider the interest of the said project as a whole and the impact of any refund/claims on the interest of all the other allottees of the said project. If the relief of refund/return as prayed for in the captioned complaint is allowed then not only would the interest of the other allottees of the said project would be jeopardised but the viability of the said project would also be jeopardised. The complaint is liable to be dismissed on this ground alone.
28. The complaint is liable to be dismissed as it is barred by the principle of delay and laches as apartment buyers' agreement was executed on 12.08.2014 with the complainant. The aforementioned document expressed that the possession would be handed over within 30 months from the date of execution of the buyers agreement, subject to timely payments by the allottee and force majeure conditions and the complainant was in knowledge and was well aware of this fact. Despite



this, the complainant delayed in making payments towards the unit, which has caused the delay in completing the project.

29. That the Ld. Authority while adjudicating a similar issue in bunch matter of complaints having its lead case bearing complaint no. "88 of 2018" titled "*Suman Bansal & others Versus Astrum Value Homes Pvt. Ltd.*" have held that granting relief of refund will not be tenable in view of jeopardizing the interests of majority allottees.
30. That the project is completed and the current status of the project has been duly conveyed to the complainant herein. The apartment is now ready and pre delivery inspection notices are being issued for block G and H where the unit of the complainant is also located. A copy of final demand letter is attached as ANNEXURE-R-3.
31. That when the respondent company commenced the construction of the said project, the RERD Act was not in existence, therefore, the respondent company could not have contemplated any violations and penalties thereof, as stated in the RERD Act.
32. That it is further respectfully submitted that in the matter of "*Neel Kamal Realtor Suburban (P) Ltd. Vs. UOI & Ors.*", the Hon'ble High Court of Judicature at Bombay, held that the provisions of RERD are not retrospective and are to be applied prospectively.
33. That the Ld. Authority while adjudicating the bunch matter of complaints having its lead case bearing complaint no. "88 of 2018"

titled "Suman Bansal & others Versus Astrum Value Homes Put. Ltd." directed the respondents to infuse INR 20 crores into the project and the respondents had diligently infused the said amounts as per directions of the Hon'ble Authority and it is due to such infusion that the project is now only 4-6 months away from completion with 4 out of 5 building already complete and only last tower, i.e., Tower I is under completion. The 4 towers, i.e., Tower E, F, G and H are complete with full infrastructure already complete in respect of said 4 towers. While the respondents infused funds amounting to appx. 25.60 crores in the said project post directions by this Hon'ble Authority, the respondents have been grappling with the same old issue of non-payment by customer which was recorded as one of the reasons for delay in the project completion as already highlighted above. Majority of customers have continued not to pay and have chosen to file cases and claim refunds as it is more financially attractive to claim interest than to take delivery of the apartment. The respondents have completed its part of the obligation and apartment is now ready for delivery and awarding refund will contribute in jeopardizing the viability of completion of the remaining part of the project.

34. That the majority of the allottees/ applicants in the said project have defaulted in making payment of outstanding dues as per the construction linked payment plan opted by them. That despite no



payments having been received by the respondent company herein from majority of its customers, the respondent company herein have ensured that all government levies and taxes such as the External Development Charges, Infrastructure Development Charges etc. had been paid in full by the respondent herein to the concerned Regulatory Authorities / Departments. Also, in order to continue the construction of the said Project and not letting the same being hampered by non-payment of dues by customers, the respondent herein has carried out and is carrying out the construction of the said Project through its own sources and borrowings.

35. That construction of the said project has not reached the stage as envisaged due to various force majeure reasons beyond the control of the respondent such as;
- a. Post 2018 construction was restarted and the construction of the project was further delayed due to the outbreak of COVID-19 which had delayed the completion of the construction to a greater extent.
 - b. Complete stoppage of construction works for 2-3 months every year in pursuance of National Green Tribunal / Haryana State Pollution Control Board directions to stop construction activity and Government also issue directions and taken other measures so that the air that we breathe becomes healthy. Resultant stoppages of construction /business activities in compliance of such directions and to restart the work



thereafter consumes 3-4 months every year to reach normalcy due to non-availability of labour and materials required. This not only delays the construction but also paralyses the commercial activity every year.

- c. More so, various allottees including the complainant have defaulted in making payment of outstanding amount as per construction linked payment plan opted by them under the agreement, which have contributed to delay in construction of the said project.
- d. Severe slump in the real estate market.

The complainant is not entitled to any relief from the Ld. Authority as the entire money paid by the complainant has already been invested and used for the purposes of carrying out the construction of the said project.

36. That respondent had already invested more than Rs. 25 Crore approx. in the said project, if any single order of refund or compensation in any form is passed by this Ld. Authority, it shall certainly create an adverse condition for other buyers and jeopardise completion deadline of the entire project.
37. That no cause of action has occurred in favour of the complainant to file the present complaint.
38. That present complaint is barred by limitation and the same is not maintainable before the Ld. Authority.



39. That the respondent company further craves leave to adduce any other such document in order to prove its case.
40. That the principal claim which has been made by the complainant herein is for the refund of the entire amount deposited by the complainant towards the booking made in favour of the complainant.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.3

41. As per reply dated 31.05.2023, respondent no.3 mentioned that complaint is not maintainable against the respondent no.3 as complainant has not sought any relief against respondent. Grievance of the complainant is against the developer- promoter who failed to adhere by the term and conditions of the allotment letter and apartment buyer agreement. That the obligation to repay the loan solely rest upon the complainant and complainant has been regular and active in paying the instalments of loan facility. Total future receivable by the bank from the applicant as per loan account statement as on 20.05.2023 is ₹42,08,484/-. Further, no allegation of deficiency of service as regards the respondent no.3 is concerned.

F. REJOINDER SUBMITTED ON BEHALF OF COMPLAINANT:

42. As per rejoinder dated 30.05.2023, complainant denies all the statements, claims, representation and averments made in reply. Respondents have failed to deliver the possession of the booked unit as per buyer agreement.



Respondents have failed to attach occupation certificate and other statutory approvals to rebut the claim of complainant.

43. That respondent is stating wrong statement that the complainant is seeking refund along with interest.
44. That there has been delay of more than 6 years and at this stage respondent cannot take advantage of force majeure. Respondent cannot take advantage of COVID-19 as the possession got due before COVID-19 struck.

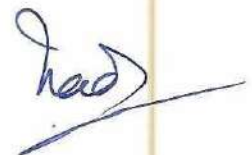
G. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

45. During the course of oral arguments, Ld counsel for complainant stated that complainant booked apartment no.G-702, in project "La Regencia" being developed by the respondent and allotted the apartment to the complainant vide allotment letter dated 31.05.2023 and apartment buyer agreement was executed on 17.10.2014 annexed at Annexure C-4 at page no.20. As per clause 4.1 agreement possession was to be delivered within 30 months from the date of execution of agreement, but respondent failed to deliver possession to the complainant. Therefore, complainant sent legal notice to the respondent annexed at page no.53 for the possession of apartment. Further, it is admitted by the respondent that complainant paid an amount of ₹44,53,450/- at page no.27 of the reply. Amount paid by the complainant can further be



acknowledged from the customer ledger annexed at page no. 27 of reply. Further charges like EDC/IDC, increased area are not payable as these demands are not valid because respondent had not yet received the occupation certificate. Also, other charges (IFMS, electricity charges) are to be paid when possession will be offered. Therefore, complainant prayed for possession of apartment along with delay possession charges and upfront interest and monthly interest. Also, as complainant has availed loan from the ICICI bank. Therefore ICICI Bank is also made a party but seeks no relief against respondent no.3.

46. On the other hand, Id counsel for respondent no.1 and 2 stated that apartment is ready and respondent will soon apply for occupation certificate. Also, respondent is offering offer of possession (fit out) to the other allottees and ready to offer the possession for fit out to the complainant without occupation certificate. Respondent is ready to settle the matter amicably. Further, stated that complainant had not paid the entire sale consideration toward the apartment.
47. However, Id counsel for complainant refused for settlement and stated that respondent had not sent any demand letter to the complainant and prayed for possession of apartment.
48. Counsel for respondent no.3 stated that complaint is not maintainable against the respondent no.3 as complainant had not claimed any relief from respondent no.3.



H. OBSERVATIONS AND DECISION OF AUTHORITY

49. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that respondent has taken the following objections w.r.t maintainability of the complaint :

- (i) Respondent has raised an objection that provisions of RERD Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 31.05.2013, when the complainant was allotted apartment no.G-702, in residential project of the company under the name "La Regencia" at sector-19, Panipat. Authority observes that regarding operation of RERD Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*. Relevant part is reproduced below for reference:-

"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result

is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.” “45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.” “53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention



of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected.”

- (ii) Furthermore, the respondent in its reply has contended that the complainant is “speculative buyer” who has invested in the project for monetary returns and taking undue advantage of RERD Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that as per section-31 of the RERD Act, 2016 “any aggrieved person” can file



a complaint against a promoter, if the promoter contravenes the provisions of the RERD Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERD Act, 2016 against the promoter for violation/contravention of the provisions of the RERD Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term 'allottee' under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 31.05.2013 and builder buyer agreement dated 17.10.2014, it is clear that complainant is an "allottee" as apartment no.G-702, in residential project named; "La Regencia" at sector-19, Panipat was allotted to her by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERD Act, 2016, there are definitions of "promoter" and "allottee" only. Further, the



definition of "allottee" as provided under RERD Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

- (iii) Respondent has taken a plea that complaint is time barred by Limitation Act, 1963. In this regard, it is observed that since the promoter till date has failed to fulfil its obligations to hand over the possession of the booked apartment in its project as per apartment buyer agreement, the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected. Further, the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

"19. 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."

RERD is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the RERD Act, 2016 as the Authority established under the Act is a quasi-judicial body and not a Court.

In view of the aforesaid observations there remains no doubt that the complaint is maintainable as per provisions of RERD Act,2016 and the Authority has complete jurisdiction and mandate to adjudicate the same on merits.

- (iv) Admittedly, complainant had booked apartment in the project of respondent and allotted apartment no.G-702, Galleon block in "La Regencia" at sector-19, Panipat vide allotment letter dated 31.05.2013 and thereafter apartment buyer agreement was executed between the parties on 17.10.2014 against the total sale consideration of ₹54,17,600/-. Out of the which paid amount is ₹44,53,450/-, and last payment of ₹5,61,399/- was made to the respondent on 30.05.2016 whereas fact remains that no offer of possession of the booked apartment has been made till date. With



respect to status of handing over of possession, respondent has submitted that respondent will apply for grant of occupation certificate soon, otherwise unit is ready. However, still no definite date of offer of possession is known

- (v) In regard to delay caused , respondent had taken plea of that possession of apartment was subject to timely payments. However, it is matter of record, as per customer ledger attached at page no.27 of reply that complainant had paid total amount of ₹44,53,450/- to the respondent, as and when demanded. Authority observes that respondent is not able to prove or substantiate with proof that complainant had made default in payments. Therefore, this plea of respondent stand rejected.
- (vi) Also, respondent had taken plea that project was not completed on time due to some force majeure conditions mainly Covid-19. Authority observes that deemed date of possession in present case as per clause 4.1 of buyer agreement is 17.04.2016. Therefore, question arises 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? Also 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 30 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent the reason given by the respondent is ceasement of construction activities during the COVID-19 period. 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.

Respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by April, 2016. Respondent 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 an excuse for non-performance of



contract for which deadline was much before the outbreak itself. To conclude, Authority observes that mere averment of force majeure without any relevant proof of the same for causing delay in offering the possession is not sufficient to justify the delay caused.

- (vii) Authority observes that the builder buyer agreement was executed between the parties on 17.10.2014 and as per clause 4.1, the possession was to be delivered upto 17.04.2016. Fact remains that possession has not been offered to complainant till date for the reason that project is complete but occupation certificate has not been received from the concerned Authority. In present situation, it is apparent that respondent failed to honour its contractual obligations without any reasonable justification. Facts also remains that complainant-allotee has duly paid the demanded amount to the respondent to the tune of ₹44.53 lacs for the booked apartment. As per section 18 of the RERA Act,2016, if the promoter fails to complete or give possession of an apartment, plot or building in accordance with terms of agreement for sale or as the case may be, duly completed by the date specified therein, the allottee may demand the refund of amount paid and in case the allottee do not wish to withdraw from the project, then he shall be entitled to



interest for every month of delay till handing over of possession. As of today, complainant-allottee wants to stay with the project and respondent is duty bound to deliver possession of apartment supported with occupation certificate.

50. Thus, the Authority finds it a fit case to allow delayed possession charges from the deemed date, i.e., 17.04.2016 to the date on which a valid offer is sent to him after obtaining completion/occupation certificate as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.

51. The definition of term ‘interest’ is defined under Section 2(z) 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;*

52. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.

53. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 21.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

54. Authority has got calculated the interest on total paid amount from the deemed date of possession i.e., 17.04.2017 till the date of this order,



i.e, 21.09.2023 till the date of this order at the rate of 10.75% as per detail given in the tables below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 21.09.2023
1.	₹44,53,450/-	17.04.2017	₹30,81,025/-
2.	Monthly interest		₹39,349/-

55. Accordingly, the respondent is liable to pay the upfront delay interest of ₹30,81,025/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹44,53,450/-, monthly interest of ₹39,349/- shall be payable up to the date of actual handing over of the possession after obtaining completion certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.
56. On perusal of complaint file it is observed that no relief has been claimed by complainant against respondent no. 3. So no directions is being passed against respondent no.3.
57. Reliefs under clause (iv) and (vii) are not pleaded by the complainant in pleadings nor argued at the time of hearing. Therefore, plea regarding these reliefs is rejected.



58. The complainant is seeking compensation on account of rent paid by the complainant from the date when the possession of unit got due, mental agony, undue hardship, cost of litigation and harassment caused for delay in possession. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

59. 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 ₹30,81,025/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹44,53,450/- monthly interest of ₹39,349/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.
- (ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.
- (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.

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


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


.....
NADIM AKHTAR
[MEMBER]