



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1937 of 2022
Date of filing:	05.08.2022
First date of hearing:	09.02.2023
Date of decision:	29.01.2024

Gaurav Goyal S/o Sh. Rajnish Kumar Goyal

Permanent Resident of village Naggal, District Panchkula,

Presently residing at B-903, Brigade Exotica, Old Madras Road, Near
Budigere Cross, Bangalore.

.....COMPLAINANT

Versus

Green space Infra heights Pvt. Ltd.

Through its Managing Director,
Registered office at :306, 3rd floor,
Inderprakash Building 21- Barakhamba Road,
New Delhi-110062

.....RESPONDENT

**CORAM: Parneet S Sachdev
Nadim Akhtar**

**Chairman
Member**

Hearing: 7th

Present: - Mr. Arpandeeep Narula, counsel for the complainant through VC.
Ms. Meenakshi Jyoti, counsel for respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present Complaint has been filed by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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, 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 Complaint no. 1937 of 2022
1.	Name of the project	Group Housing (Shree Vardhman Green Space, Sector-14, Extention II, Panchkula)
2.	Name of the promoter	Green Space Infraheights Private Limited
3.	RERA registered/not registered Unit No.	Registered
4.	Unit No. allotted	Flat no. 0603, Tower-B, 6 th



		floor
5.	Unit area (Carpet area)	511 sq.ft Carpet area and balcony area of 100 sq. ft.
6.	Date of allotment	30.06.2017
7.	Date of Builder Buyer Agreement	02.09.2017
8.	Due date of offer of possession	14.03.2020
9.	Possession clause in BBA	<i>"Clause 8 (a) "Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalment of the other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the said flat to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"</i>
10.	Basic sale price	₹20,94,000/-



11.	Amount paid by complainant	₹21,20,176/-
12.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

- i. That the complainant vide application no 001153 dated 28/06/2017, applied for the allotment of residential unit/flat/apartment in an Affordable Group Housing Colony namely; " Shree Vardhman Green Space" proposed to be developed by Respondent/promoter, i.e., Green Space Infra Heights Pvt. Ltd and deposited Rs 1,04,700/- through cheque no 000066 dated 28/06/2017 drawn on ICICI Bank at Barwala towards the same.
- ii. That in pursuance to the above deposited, respondent/promoter allotted the residential unit, i.e., Flat no 0603, Tower No B, Floor no 6th, in "Shree Vardhman Green Space" Sector-14, Panchkula Extension-II, Panchkula, Haryana to the complainant and asked for the further remittances of Rs.12,04,050/- from the complainant.
- iii. That thereafter, complainant requested that the above said amount be taken in instalments for which the respondent/promoter readily agreed and vide letter dated 16.08.2017 asked the complainant to deposit Rs 4,18,800/- on dated 28.08.2017, Rs 5,23,500/- on 28.12.2017 and Rs 2,61,750 on 28.06.2018. In pursuance to the above letter dated 16.08.2017, complainant deposited Rs.4,18,800/- for which receipt



dated 29/08/2017 is also issued. Thereafter respondent/promoter entered in to an agreement with complainant on dated 02/09/2017 at New Delhi, wherein it was decided that the total basic sale price of the flat would be Rs.20,94,000/-.

- iv. That complainant deposited the full amount of Rs.21,20,176 (inclusive of GST)/- through various instalments and complainant submits that nothing is pending against him. The detail of various payments/instalments paid by the complainant is given as under: -

Sr. no.	Receipt date	Amount (Rs.)
1.	29.06.2017	1,04,700/-
2.	29.08.2017	4,18,800/-
3.	11.12.2017	5,23,500/-
4.	26.06.2018	2,61,750/-
5.	26.12.2018	2,82,690/-
6.	29.06.2019	2,64,367.50/-
7.	20.01.2020	2,64,368/-
	Total	21,20,175.5

- v. That as per clause 8(a) of the agreement dated 02/09/2017, the possession of the flat was to be delivered within a period of four years from the date of approval of building plans or grant of environmental clearance, whichever is later. As per clause 'C' of the agreement the building plans stood approved in the year 2014 and as per the

information submitted in HRERA by the respondent/promoter, environment clearance was obtained on 15.03.2016, meaning thereby that the possession was to be granted by respondent/promoter last till 14.03.2020.

- vi. That despite there being no delay on the part of complainant in depositing the money towards the flat, still even till today respondent/promoter has not been able to deliver the possession of the flat to the complainant. Not only this but also with the kind of pace project is progressing on site, it is difficult to say that the same would be delivered in near future. Complainant submits that because of his exigencies he cannot afford to wait more for possession of the flat.
- vii. That the complainant served a legal notice dated 15/06/2022 to the respondent promoter and asked for the refund of the money as the complainant is no more interested in taking the delayed possession of flat. However, no reply of the same has been given by the respondent to the complainant till date.
- viii. Thus the respondent promoter has failed to abide by the contractual terms stipulated in the builder buyer agreement and is in breach of the same. The cause of action to file the complaint is continuing as the respondent/ promoter have failed to deliver the possession of developed residential unit/project.



C. RELIEFS SOUGHT

3. Complainant has sought following reliefs :

- (i) Direct the respondent to refund the amount of Rs.21,20,176/- alongwith 15% innterest;
- (ii) Direct the respondent to pay an amount of Rs.50,000/- towards cost and litigation expenses.
- (iii) Direct the respondent to pay an amount of Rs.2,00,000/- as compensation on account of harassment, mental agony and undue hardship caused to him on account of deficiency in services and unfair trade practice.
- (iv) Pass any other/further order or relief which this Hon'ble Court may deem fit and proper in the interest of justice in the light of the above-mentioned circumstances.

D. REPLY ON BEHALF OF RESPONDENT

- (i) The complainant submitted an application to the answering Respondent for booking/allotment of a Flat along with one open parking space for two-wheeler in the said scheme/colony. The application No.001153 dated 28.06.2017 signed and submitted by the complainant which had all necessary particulars of the residential scheme, such as description of land, license and building plans granted/approved by DCP, Haryana and also, salient



terms and conditions on which the allotment was to be made to the complainant.

- (ii) The complainant also read and understood the terms and conditions of the Flat Buyer Agreement and undertook to sign the same as and when required by the Respondent.
- (iii) The application form contained the payment plan in accordance to which the complainant was to make the due instalments as specified.
- (iv) That the payment plan clearly stated at the time of application/booking 62.5% of the Basic Price, Within 18 months 12.5% of the Basic Price, Within 24 month 12.5% of the Basic Price, Within 30 month 12.5% of the Basic Price + Stamp duty + other charges + Service Tax. The
- (v) That under the Affordable Group Housing Policy of Govt. of Haryana, the allotment was required to be made through draw of lots to be held in the presence of a committee consisting of Deputy Commissioner or his representative (at least of the cadre of Haryana Civil Services), Senior Town Planner (Circle Officer), DTP of the concerned district. The Policy prescribed a transparent procedure for allotment of a flat/apartment in the affordable housing project of the which inter-alia included advertisements for booking of apartments by the Coloniser/Developer on two



occasions at one week interval in one of the leading English National Daily and two Hindi newspapers having circulation of more than ten thousand copies in the state of Haryana to ensure adequate publicity of the Project, Submission of the applications by the interested persons, scrutiny of all applications by the Coloniser/Developer under the overall monitoring of the concerned DTP within a period of three months from the last date of receipt of applications, fixing of the date for draw of lots by the concern Senior Town Planner, publication of the advertisement by the Coloniser informing the applicants about the details regarding date/time and venue of draw of lots in the newspaper etc.

- (vi) Procedure as laid down in the Policy was duly followed by the answering Respondent.
- (vii) The complainant was one of the successful applicants and he had been allotted flat no. 0603 on 6th Floor in Tower-B having a Super built up area of 511 square feet, and Balcony Area of 100 square feet, in the said Scheme/project.
- (viii) That the Complainant, after going through the terms and conditions of the agreement dated 02.09.2017, signed and handed over the same to the answering respondent. That as per Clause 4 (a) of the flat buyer agreement, the timely payment of the instalments of the basic price and other charges are the essence of the agreement.



Further that, as per Clause 5 (a) complainant had agreed and undertaken to pay any municipal tax, property tax, service tax, VAT, GST and/or any enhancement thereof including but not limited to EDC, or any other tax or charges, the government levies including any fresh incidence of tax or compensation as may be levied, charged or imposed by the Government of Haryana/competent commission/ Central Government, retrospectively or prospectively. If such charges are increased with retrospective or prospective effect after conveyance/sale deed has been executed, then the Allotee (Complainant) undertakes to pay the same upon the intimation by the developer. A copy of the flat buyer agreement dated 02.09.2017, annexed as annexure – 4.

- (ix) That the complainant requested through letter dated 09.08.2017 to respondent, that complainant is not able to make payment of Rs.12,04,050/- which is due on 29.06.2017 and want extension for payment without charging any interest. The respondent through letter dated 16.08.2017, informed to complainant regarding waive off interest on delay payment and also informed that if any further delays occur from the given date in the letter dated 16.08.2017 respondent is liable to charge interest as per builder buyer's agreement. A copy of the letter dated 16.08.2017, annexed as annexure-5.



- (x) It is the complainant only who breached his obligation to make the entire and timely payment of the instalments and caused losses to the answering respondent as it kept reserved one of the flat for the complainant for a considerable period without payment of the agreed instalments on time.
- (xi) That the answering respondent has sent various reminders dated 09.11.2017, 21.03.2018, 19.05.2018 in which the answering respondent has granted opportunities to the complainant for making the remaining instalments. Copies of the reminders dated 09.11.2017, 21.03.2018, 19.05.2018 annexed as annexure - 6.
- (xii) That as per the agreement, the respondent was to start the construction of the project from the date of environmental clearances which was granted on 15.03.2016.
- (xiii) That as per clause 8 (a) of the agreement the date of delivery of possession is tentative and subject to force majeure clause/circumstance, which was in the knowledge of the complainant. It is relevant to mention here that from January 2020 onwards things have started moving out of control of the answering respondent. A major force majeure event, situation and circumstances emerged and occurred that made the construction at site impossible for a considerable period of time. Such events, situations and circumstances included inter-alia:



- (a) Nationwide lock-down, due to the emergence of COVID-19 pandemic,
- (b) Massive nationwide migration of laborer's from constructions sites to their native villages, creating an acute shortage of labourers in the Project site region,
- (c) Disruption of supply chains for construction materials and non- availability of them at construction sites due to Covid-19 pandemic,
- (d) Ban on non-essential services which included the real estate and construction sector.
- (e) Closure/restricted functioning of various offices, i.e., private and public/government offices, disrupting the various approvals required for the real estate projects.
- (f) Resultant in sudden financial distress financial instability and imbalance,
- (g) The Ministry of Home Affairs, GOI vide its notification dated 24 March, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started from March, 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the



lockdown from time to time. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, restricting all non-essential commercial activities.

- (h) Even before the nation could recover fully and properly from the impact of the first wave of Covid-19, the second wave hit the entire country very hard and badly which resulted in another lockdown from April 2021 till June 2021 and further the threat of 3rd wave was looming at large.
- (xiv) That complainant in his prayer is seeking refund of the deposited amount, further seeking ₹2,00,000/- as compensation on account of harassment, mental agony, which are contradictory. That there is well settled law by apex court, i.e., Civil Appeal No (S). 6745 6749 Of 2021, M/S. Newtech Promoters And Developers Pvt. Ltd. Vs. State Of Up & Ors. Etc, that this Hon'ble Authority does not have power to Adjudicate the present case, complainant cannot seek compensation before this Hon'ble authority and complaint deserve to be dismissed on this ground.
- (xv) That the complainant has sought the refund of the entire amount as relief of this present complaint, but respondent will not be liable to pay the entire amount as the amount consists of Govt. taxes,



CGST, SGST etc. too which the respondent has already paid to the Govt. authorities. That the amount of refund (if allows) should be after the deduction of the Govt. taxes.

(xvi) That it is the complainant only who breached his contractual obligations and therefore, he is not entitled to invoke the jurisdiction of this Hon'ble Authority and do not deserve any relief from this Hon'ble Authority.

(xvii) It is specifically pointed out that the complainant is a defaulter, having deliberately failed to make the payment of instalments within the time prescribed. It is further stated that due to non-timely payment by the complainant, the respondent had to suffer financial instability in planning and executing the said project at the time of COVID-19 pandemic, which itself had caused huge irreparable loss to the answering respondent as the payment plan/schedule as submitted by the complainant (vide Annexure-A) itself clearly states that the complainant had to pay the payment as per the payment plan.

(xviii) That due to the abovementioned intervening circumstances and force majeure conditions as noted above, which were in nobody's control, the schedule as agreed disrupted. Taking into consideration these bans, lockdowns, restricted movement, and migration of

labours etc. from March 2020 till a long period of at least two years.

- (xix) That complainant is himself liable for non-compliance of the payment plan as per his sweet will and choice which was somewhere hampered the financial planning of the respondent in fulfilling its duties due to sudden and unexpected financial burden and that too at the time of existence of COVID-19 pandemic which had left the whole country in financial instability.

E. REJOINDER SUBMITTED BY THE COMPLAINANT

- (i) That the Covid 19 pandemic started post 15.03.2020 whereas possession was to be delivered by the respondent within four years from date of environment clearance which stood 15.03.2016. Therefore, it is submitted that had the respondent worked efficiently then the possession should have been delivered before the pandemic as per terms and conditions of the agreement dated 02.09.2017.
- (ii) That once the respondent has himself agreed to waiving of the interest and thereafter the remaining amount has been paid without delay and even before the dates agreed as per letter dated 16.08.2017, therefore, there was no delay in payment.
- (iii) It is the respondent who himself breached the terms of agreement wherein respondent not able to deliver possession to the complainant despite passing of almost 7 years till date.

- (iv) That complainant had paid full payment to the respondent and therefore is entitled to get the complete refund including GST.
- (v) It is submitted that complainant is not an investor and rather is a customer.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

4. Counsel for complainant and respondent reiterated the facts of the their complaint and reply respectively. Authority specifically sought status of grant of occupation certificate and latest status of project, but no satisfactory reply was given by the counsel for respondent

G. ISSUE FOR ADJUDICATION

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

H. OBSERVATIONS AND DECISION OF AUTHORITY

6. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes, it is admitted fact that the complainant booked a flat in the real estate project, "Shree Vardhman Green Space" being developed by the promoter namely; "Green Space Infraheights Pvt. Ltd" and complainant was allotted flat no.0603, Tower B, 6th floor having carpet area 511 sq. ft vide allotment letter dated 30.06.2017 in said



project at sector-14, Panchkula Extension II, District Panchkula, Haryana. The flat buyer agreement was executed between the parties on 02.09.2017.

7. The contention of the respondent is that as per clause 4(a) of flat buyer agreement, timely payment was the essence of the agreement and complainant defaulted in payments in spite of various reminders dated 09.11.2017, 21.03.2018 and 19.05.2018, being sent to the complainant. In this regard, Authority observes that complainant vide letter dated 09.08.2017, requested the respondent that an amount of ₹12,04,050/- be taken in installment and want extension for payment without charging any interest. In reply to this letter, respondent vide letter dated 16.08.2017, informed the complainant that above said amount be paid in installment and respondent will not charge any interest if complainant paid the amount as per dates mentioned in the letter. Respondent mentioned that an amount of ₹4,18,800/- due on 28.08.2017, ₹5,23,500/- due on 28.12.2017 and ₹2,61,750 on 28.06.2018. In compliance to said letter dated 16.08.2017, complainant paid ₹4,18,800/- on 28.08.2017 via RTGS and receipt issued on 29.08.2017. Thereafter flat buyer agreement was executed between the parties on 02.09.2017. Later on complainant made payment of ₹5,23,500/- on 08.12.2017 via RTGS, ₹2,61,750/- on 26.06.2018, ₹2,82,690/- on 26.12.2018 and ₹264367.50/- on



29.06.2019 and respondent issued respective receipts to the above said amounts. As per receipts on record, it is revealed that complainant had paid a total of ₹21,20,176/- against the basic sale price of ₹20,94,000/-. Considering the above facts, Authority observes that through letter dated 16.08.2017, respondent himself agreed to waive off the interest on amount and thereafter, complainant made timely payment to the respondent. Therefore, it concludes that there neither any default nor delay in making payments by the complainant to the respondent. So the plea of respondent that complainant did not make payments on time is rejected.

8. Respondent had taken another plea that project was not completed on time due to some force majeure conditions mainly Covid-19. Authority observes as per clause 8 (a) of agreement respondent/developer was under obligation to hand over possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced as under :

“Clause 8 (a) “Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof,



including but not limited to the timely payment of instalment of the other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the said flat to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"

As per the pleadings mentioned both in complaint and reply, respondent/ developer received approval of building plans on 09.12.2014 and got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, date of handing over of possession comes to 15.03.2020. Reason given by respondent for delay/non-performance of contract on the part of 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 March, 2020 and respondent is claiming benefit of Covid -19 which also came into effect on 23.03.2020. Had the respondent completed the project at pace than the construction of project would have completed much before March, 2020. Also, even if benefit of Covid-19 is given to respondent, fact remains that respondent still has not completed the project so that possession be given to the complainant. Also period of 4 years from the date of approval of environment clearance is a reasonable time to complete development works in the project and handover possession to the allottee, however, respondent failed to hand over possession to the complainant. The project of the respondent is of an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying their hand earned money, legitimate expectations of the complainant would be that possession of the flat will be delivered within a reasonable period of time. In present case, complainant had waited for almost 7 years from the date of execution of flat buyer agreement and had shown his intention to withdraw from



project by sending legal notice dated 15.06.2022 to the respondent however, respondent failed to give any reasonable explanation to the complainant. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was 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 and complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

9. Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give



possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

10. 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;

11. 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".

12. 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., 29.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

13. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainant interest from the date the amounts were paid



till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of ₹21,20,175.5/- 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 10.85% (8.85% + 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 10.85% till the date of this order and total amount works out to ₹33,98,460.5/- as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 29.01.2024
1.	₹1,04,700/-	29.06.2017	₹74882/-
2.	₹4,18,800/-	29.08.2017	₹291935/-
3.	₹5,23,500/-	11.12.2017	₹348735/-
4.	₹2,61,750/-	26.06.2018	₹159039/-
5.	₹2,82,690/-	26.12.2018	₹156384/-
6.	₹2,64,367.50	29.06.2019	₹131710/-
7.	₹2,64,368/-	20.01.2020	₹115600/-
	Total=₹21,20,175.5/-		₹12,78,285/-
Total amount to be refunded by respondent to complainant= ₹21,20,175.5/- + ₹ 12,78,285/- = ₹33,98,460.5/-			

14. Further, the complainant is seeking compensation on account of mental agony and physical harassment caused to the complainants. 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.

15. Authority observes that respondent while applying for registration of project submitted that builder buyer agreement is as per terms and conditions of RERA Act, 2016. However, it is observed by the Authority that in present case respondent had collected approximately 25% of basic sale price before execution of builder buyer agreement. Also, in para 4 of reply, respondent has mentioned payment plan as per which complainant has to make payment of 62.5% of basic price at time of application/booking of unit. Therefore, Authority observes



that huge amount is collected by the respondent without execution of the builder buyer agreement. Respondent is thus liable for action under section 13 and section 61 of the RERA Act.

I. DIRECTIONS OF THE AUTHORITY

16. 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 amount of ₹33,98,460.5/- to the complainant as specified in the table provided in para 13 of this order. It is further clarified that respondent will remain liable to pay the complainant interest till the actual realization of the amount.
- (ii) Also, respondent is directed to pay cost of ₹10,000/- payable to the Authority and ₹5000/- payable to the complainant imposed vide order dated 10.05.2023.
- (iii) 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.



- (iv) In view of the violation observed in para 15 of this order, project section of the Authority is directed to register a suo-moto complaint be registered against respondent.

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


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]