



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2548 of 2022</b>
<b>Date of filing:</b>	<b>13.10.2022</b>
<b>Date of first hearing:</b>	<b>06.12.2022</b>
<b>Date of decision:</b>	<b>21.11.2023</b>

1. Vipin Gulati S/o Sh. Surinder Gulati  
R/o Flat no. 4104, Prestige High Fields,  
Financial District, Gachibowli, Hyderabad- 500032.
2. Priyanka Nanda W/o Sh. Vipin Gulati,  
R/o Flat no. 4104, Prestige High Fields,  
Financial District, Gachibowli, Hyderabad- 500032 ...COMPLAINANTS

VERSUS

RPS Infrastructure Limited  
Registered office: 1117-1120, 11th Floor,  
DLF Towers, Tower-B, Jasola District Center,  
New Delhi-110025

....RESPONDENT

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

**Present:** Ms. Navneet, learned counsel for the complainants through video conference.

Ms. Manpreet Khurana, learned counsel for the respondent.

### **ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 13.10.2022 has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for

short Act of 2016) read with Rule 28 of 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 unit booked by complainants, the details of sale consideration, amount paid by complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	RPS Auria
2.	Nature of the Project	Residential Group Housing Project
2.	RERA registered or not	Registered vide Registration Certificate No. 200 of 2017
3.	Date of booking	03.04.2013
5.	Apartment/Flat no.	0304 on 3 <sup>rd</sup> Floor in Tower no. T-06
6	Super area	1565 sq.ft.
7.	Date of allotment	21.08.2013
8.	Date of Builder buyer agreement (BBA)	04.09.2013



9.	Deemed date of possession	03.09.2017 as per clause 22 of the BBA.  <i>Clause No. 22:</i> "Subject to due compliance of the obligations and terms of this agreement, including but not limited to timely payment of total price, stamp duty and other charges by the allottee(s), the company shall endeavor to complete the construction of the said unit within 48 months from the date of execution of this agreement or from the date of getting requisite sanctions from the concerned authorities, for commencement of the project, whichever is later.
10.	Basic sale price	Rs. 56,79,072/-
11.	Amount paid by complainants.	Rs.60,52,810/- (as per receipts information annexed at Pg. no.69-70 of complaint file)
12.	Offer of possession	No

**B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANTS**

3. Facts of the complaint are that a unit/flat was booked by complainants in the project of respondent namely, "RPS Auria" situated in Revenue Estate of villages Baselwa & Palwali, Sector-88, Faridabad, Haryana by paying an amount of Rs.3,00,000/- vide cheque No.050701 dated 15.03.2013 and an amount of Rs. 2,00,000/- vide cheque No.050702 dated 10.04.2013 as booking amount. An application for allotment of 3BHK in "RPS AURIA" had been submitted by complainants on 03.04.2013.





4. That respondent executed an apartment buyer's agreement with complainants on 04.09.2013 whereby respondent agreed to sell the apartment no.0304 on 3<sup>rd</sup> Floor in Tower no. T-6 having super area of 1565 sq.ft. to complainants. Complainants have opted for construction link plan. The basic sale price of the said unit/flat was Rs 56,79,072/- as mentioned at page no.13 of the said agreement. As per clause 22 of the agreement, construction of the said unit was to be completed within 48 months from the date of execution of agreement, i.e., by 03.09.2017. However, till date no intimation with respect to completion of the project or offer of possession has been made to complainants. The copy of agreement dated 04.09.2013 and payment plan are annexed as Annexure C-1 and Annexure C-2 respectively.
5. That complainants paid an amount of Rs.11,70,911/- till June 2013 as per the demands raised by respondent. More than 20% of basic sale price of the unit has been demanded and accepted by respondent, before execution of any written agreement between the parties that is violation of section 13(1) of RERA, 2016 as promoter is not entitled to accept a sum more than 10% of the cost of apartment/unit as an advance payment without first entering into the agreement for sale.
6. That complainants being sincere towards timely payments to respondent applied for home loan to State Bank of India which granted loan of Rs.51,05,000/- as per terms of the loan agreement. It is pertinent to



mention that it was an obligation on the complainants to pay the EMIs/ Pre-EMIs as laid down in the loan agreement to State Bank of India regularly each month, irrespective of the stage of construction of the project and irrespective of handing over possession of the unit in question to complainants. Hence, delay in completion of the project caused huge financial losses to complainants as complainants on the one hand resided in a rental accommodation bearing payment of rent on monthly basis and on the other hand, complainants had been burdened of payment of EMIs to State Bank of India.

7. That complainants made timely payments as per demand raised by respondent. Despite complainants having paid substantial amount of Rs.60,52,810/- till 29.03.2017, respondent failed to perform his part of duties as per the said agreement as the project has not been completed within stipulated time period and even respondent denied to pay delay interest which complainants are entitled as per Real Estate (Regulation & Development) Act, 2016. A copy of receipt issued by the respondent acknowledging receipt of amount of Rs.60,52,810/- from the complainants is annexed as Annexure C-3.
8. That complainants approached respondent several times from 2017 till 2022 and expressed their problems due to non-delivery of the allotted unit to them and also enquired about status of construction of the unit allotted



to them, however, respondent neither gave any appropriate response to complainants' queries nor gave any timelines to deliver the unit to them.

9. That tentative date of offer of possession as per the agreement was 03.09.2017, however, the possession had not been offered to complainants till date and there had been delay of more than nine years in completion of the project since booking. Hence, complainants faced financial crunch and harassment both mentally and financially.
10. That complainants want to withdraw from the project as delay of more than nine years has already been caused in completion of the project and there is no hope of completion of project in the near future. As per the obligations on respondent-promoter u/s 18 of the RERA Act, 2016 read with Rule 15 of HRERA Rules, 2017, the promoter has an obligation to refund entire amount paid by complainants to respondents against the unit in question along with interest at the rate prescribed from date of each payment till actual realization of entire amount.
11. That respondent has committed breach of trust with complainants on the basis of their impressive pictures and false promises due to which complainants have drained out from his hard-earned money and by this way respondent has cheated the complainants.
12. That despite receiving substantial amount by respondent from complainants, respondent failed to complete the project within stipulated





time even when no force majeure was involved and respondent failed to give valid/actual physical possession of the unit allotted to complainants.

13. That by the wrongful acts, conduct and behavior as well as deficient services of respondent, complainants have suffered the following losses/damages:

- a) Complainants have suffered financial losses of consideration amount of the flat which had already been paid to respondent since booking of the unit in the year 2013.
- b) Complainants have also suffered the financial losses of the amount of inflation which has taken place in Real Estate Sector in Faridabad, Haryana from the date of booking till date.
- c) Complainants have to spend a lot of their valuable time in pursuing the above said matter with respondent and in the process, they have suffered loss of their valuable time and energy.
- d) Complainants have suffered a lot of mental agony, pain and harassment which cannot be compensated by any means.

### **C. RELIEF SOUGHT**

14. In view of the facts mentioned above, complainants pray for the following relief(s):

- (i) To give necessary directions to respondent for refund of the payment made in lieu of unit/apartment till date along with the prescribed rate of interest, from the date of each payment till the actual date of refund



of entire amount deposited with respondent, as per the provisions of Section 18 and Section 19(4) of the Real Estate (Regulation and Development) Act, 2016.

- (ii) To impose penalty upon the respondent as per the provisions of Section 60 of Real Estate (Regulation and Development) Act, 2016 for willful default committed by them.
- (iii) To impose penalty upon the respondent as per the provisions of Section 61 of Real Estate (Regulation and Development) Act, 2016 for contravention of Sec.12, 13,14 and Sec. 16 of Real Estate (Regulation and Development) Act, 2016.
- (iv) To issue directions to make liable every officer concerned, i.e., Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of Real Estate (Regulation and Development) Act, 2016 to be read with Haryana Real Estate (Regulation and Development) Rules, 2017.
- (v) To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- (vi) To issue direction to pay the cost of litigation.
- (vii) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.





**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed reply on 24.02.2023 pleading therein:

15. That the present complaint is related to project 'RPS AURIA' of the respondent company, situated at Sector 88, Greater Faridabad, Faridabad and the Unit No.0304 in Tower No. T-6 of the said project is the subject matter of the present complaint.
16. That the Tower No. T-6 under 'RPS AURIA' project in which the unit in question is located, is registered under the provisions of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and in terms thereof, date of registration of the project unit is extended as June 2021. True copy of registration No.200 of 2017 and certificate of extension dated 26.05.2021 & 02.08.2021 are annexed as Annexure-R3 (colly).
17. That the respondent company has completed the construction of Tower No. T-6 of the project including the said unit no. T-06-0304 and has got requisite occupation certificate issued by competent authority on 20.01.2023. A copy of occupation certificate dated 25.01.2023 is annexed as Annexure-B4.
18. That there has been no deficiency in service on the part of the respondent and the present complaint is without any cause of action and therefore, the



present complaint is misconceived and baseless and the same is liable to be dismissed with exemplary costs.

19. That this Authority can adjudicate upon only complaint which can be decided summarily, whereas the present complaint involves the mixed and complicated questions of law and facts as such the claim raised and the allegations made in the complaint under reply cannot be proved by mere affidavits or interrogatories and cannot be properly adjudicated upon by this Authority for the reasons that their adjudication involves exhaustive and elaborative evidence both oral as well as documentary for arriving at just, fair and proper decision thus, the present complaint is beyond the scope and ambit of this Authority, hence is not maintainable.
20. That the allotment of unit nol. T-06-0304 is made in favour of complainants as per the terms and conditions of the buyer's agreement dated 04.09.2013 which is an arbitration agreement, containing an arbitration clause. A copy of buyer's agreement is annexed as Annexure-R5. The relevant clause no.64 of the buyer's agreement dated 04.09.2013 is reproduced below:

*Clause No.64:*

*"All or any disputes arising out or touching upon or in relation to the terms and conditions of the Application Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled amicably through discussion, failing which the same shall be settled through Arbitration. The birth of the same proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory*





*amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in New Delhi or Faridabad, Haryana by a sole arbitrator, who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The allottee hereby confirms that the allottee shall have no objection to this appointment by the Company even if the person so appointed as the arbitrator is an employee or advocate of the Company or otherwise is concerned to the Company and notwithstanding such the allottee confirms relationship/connection, that allottee shall have no doubts as to the independence or the impartiality of the sole arbitrator so appointed by the Company. The Courts at Faridabad alone and the Punjab & Haryana High Court at Chandigarh alone shall have the Jurisdiction."*

In view of Clause-64 above and in view of Section 8 of the Arbitration and Conciliation Act, 1996, this Authority has no jurisdiction to entertain, adjudicate upon and decide the disputes between the parties and accordingly, the parties are required to be referred for arbitration.

21. That the complainants applied for allotment of a residential unit vide application dated 10.04.2013 and a residential unit, i.e., unit no.0304 in Tower no. T-6, RPS AURIA having approximate super area of 1565 sq.ft. situated at RPS AURIA, Sector 88, Greater Faridabad, Faridabad (Haryana) was provisionally allotted in favour of the complainants vide allotment letter dated 21.08.2013 for a net Basic Sale Price (BSP) of Rs.56,79,072/-. Total sale price of the unit is Rs.77,01,175/- besides applicable taxes, stamp duty, registration charges etc. payable by the complainants as per buyer's agreement. True copies of application dated





10.04.2013 along with price list w.e.f. 03.04.2013 & proposed unit plan and allotment letter dated 21.08.2013 are annexed as Annexure-R8 (Colly) and Annexure -R9 respectively.

22. That an apartment buyer's agreement was executed between both the parties on 04.09.2013.
23. That in terms of clause 22 and 23 of apartment buyer's agreement dated 04.09.2013, the respondent had to make an endeavour to complete the construction of the unit within 48 months from the date of execution of buyer's agreement or from the date of getting various sanctions from the concerned authorities required for commencement of construction of the project whichever is later, and subject to force majeure circumstances and subject to receipt of all the payments as per payment plan and other charges due and payable, stamp duty and other charges up to date of offer of possession.
24. It is specially agreed, understood and confirmed by the parties that in case of any delay (except force majeure) by the respondent in completion of construction of the said unit and the complainants not being in default of terms and conditions as set out in the application as well as in the buyer's agreement, the complainants shall be entitled for compensation, and the same can be determined only at the time of execution of the conveyance deed.



25. In respect of the said unit, demands were raised as per stages of construction according to the construction linked payment plan and as per terms of allotment/ buyer's agreement and as per stages of construction, the instalments become due, accordingly, demands were served on the complainants which were not paid timely and hence, delay interest also becomes due which are to be dispersed by the complainants.
26. On the facts and in the circumstances submitted above, it is evident that despite facing hurdles on various counts as some of the allottees withheld the instalments, slow-down/non-reaction of market as per expectation, in arranging huge funds in addition to amount received from the allottees to meet out the cost of construction of the said tower, those were completely beyond control of the respondent, the respondent has completed construction of the Tower No.T-06, RPs AURIA in April 2022 and applied to the competent authority for issuance of Occupation Certificate on 05.04.2022. The occupation certificate has been granted by competent authority in respect of Tower No. T-06 vide its letter dated 25.01.2023 and the possession of the said unit is ready for delivery to the complainants in terms of the buyer's agreement. Thus, the complaint deserves to be dismissed.
27. That the complainants have sought the reliefs of litigation cost from this Authority, however, the power for grant of said relief has been bestowed



upon the Adjudicating Officer, HRERA as per Section 71 of the Real Estate (Regulation & Development) Act, 2016.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT**

28. During oral arguments learned counsel for the complainants and respondent have reiterated arguments as mentioned in their written submissions.

**F. ISSUES FOR ADJUDICATION**

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

**G. OBSERVATIONS AND FINDINGS OF AUTHORITY**

30. Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes that there is no dispute with respect to the facts that the complainants had booked a unit in the project named "RPS AURIA" being developed by respondent in Sector 88, Faridabad in the year 2013. Apartment No. 0304 on 3<sup>rd</sup> Floor in Tower no. T-06 admeasuring super area 1565 sq. ft was allotted to complainants vide allotment letter dated 21.08.2013. Apartment Buyer's Agreement was executed between the parties on 04.09.2013. Respondent has not denied the payment receipts of Rs.60,52,810/- annexed with complaint.





31. Main grouse of the complainants is that respondent had committed to complete construction of the said unit within 48 months of execution of the agreement for sale, i.e., by September 2017, however, even after a delay of five years from due date of delivery of possession there is no intimation from respondent with respect to stage of completion of unit or offer of possession to complainants. Complainants are aggrieved by the fact that despite numerous requests made to respondent to handover possession of apartment allotted to them along with delayed possession interest or to intimate them regarding construction/completion of the unit. Respondent failed in its obligation to do so and is, therefore, in violation of Section 11 (4) (a) read with Section 19 (2) of Real Estate (Regulation and Development) Act, 2016. Consequently, complainants have lost faith in respondent and are praying for refund of paid-up amount of Rs.60,52,810/- along with interest under Section 18 (1) of Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of Haryana Real Estate (Regulation and Development) Act, 2017.
32. Per contra, respondent in its reply dated 24.02.2023 had denied the allegations of delay in handing over of possession of the unit/apartment to complainants. Moreover, respondent has raised preliminary objection regarding maintainability of the complaint on the ground that the Authority does not have the jurisdiction to adjudicate the captioned complaint as clause -64 of the apartment buyer's agreement dated 04.09.2013 read with



Section 8 (1) of the Arbitration and Conciliation Act, 1996 provides that in case complainants are aggrieved for breach of any provision of the agreement for sale which is a subject of an arbitration agreement, they are required to initiate arbitration proceedings for resolving the dispute.

With regard to this preliminary objection, Authority is of the opinion that the 'jurisdiction of the Authority' cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Section 88 of the Act also provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506* and followed in case of *Aftab Singh and Ors. vs. Emaar MGF Land Ltd and Ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently, the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of



arbitration clause could not be construed to take away the jurisdiction of the Authority.

33. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view.
34. In view of the above judgments and considering the provision of the Act, the Authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act, 1986 and the Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Authority has no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint. Present dispute does not require to be referred to arbitration necessarily, hence objections of the respondent with respect to maintainability of the complaint due to lack of jurisdiction stands rejected.





35. Respondent in its reply has further raised objection that present complaint involves mixed and complicated questions of law and therefore allegations levied by complainants cannot be adjudicated in summary proceedings before this Authority. In this regard, Authority observes that complainants by way of filing this complaint under Section 31 of Real Estate (Regulation and Development) Act, 2016 are exercising their rights as provided under Section 18 of the Act. Here, Authority refers to the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Pvt. Ltd. vs State of Uttar Pradesh and others, 2021-2022(1)RCR (C) 357* and followed in the case of *Ramprastha Promoter and Developers Pvt. Ltd. vs Union of India and others dated 13.01.2022 in CWP bearing number 6688 of 2021*, wherein it has been held that:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the*



*powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, Authority has all jurisdiction to adjudicate the captioned complaint.

36. Proceeding on merits of the case, Authority observes that complainants in their complaint have alleged that vide apartment buyer's agreement dated 04.09.2013 respondent had agreed to complete the construction of the unit in 48 months from execution of agreement i.e., 03.09.2017, however till date of filing of present complaint, respondent neither made any valid offer of possession despite there been no force majeure event during the committed time period, nor updated/intimated the complainants about the stage of construction. Complainants have further alleged that the basic sale price of the unit was Rs 56,79,072/- against which they have already paid an amount of Rs.60,74,259/-. They have furthermore alleged that respondent had demanded Rs.11,70,911/- , i.e., more than 20% of the basic sale price of the unit even before execution of any written agreement between the parties which was accordingly paid by the complainants till June 2013, thus, respondent is in violation of Section 13 (1) of Real Estate (Regulation and Development) Act, 2016, wherein it is provided that promoter is not entitled to accept a sum of more than 10% of the cost of





the apartment/unit as advance payment without first entering into agreement for sale.

37. Whereas, respondent in its reply had denied that construction of the unit was to be completed and possession was to be handed over by 03.09.2017. Respondent in its reply has averred that subsequent to the Real Estate (Regulation and Development) Act, 2016 coming into force, real estate project 'RPS AURIA', where unit of the complainants is situated, was registered with Haryana Real Estate Regulatory Authority vide registration certificate no. 200 of 2017, validity of which was extended vide extension certificate dated 26.05.2020 and 02.08.2021. And, respondent has completed construction of tower T-6 of the project including said unit no. T-06-034, requisite occupation certificate has been issued by the competent authority on 25.01.2023 and respondent is ready and willing to hand over possession of the unit as per terms of agreement, therefore, no delay in offering possession can be attributed to respondent
38. In order to determine whether there has been any delay in offer of possession on part of respondent or not Authority has perused apartment buyer's agreement relied upon by the complainant and not disputed by the respondent. A conjoint reading of clause-22 and 23 of the apartment buyer's agreement dated 04.09.2103 reveals that the respondent promoter had agreed that it shall endeavour to complete the construction of the unit





within 48 months from the date of execution of the agreement or from the date of getting requisite sanctions from the concerned authorities, for construction of the project, whichever is later. Further, if the possession of the said apartment is delayed due to force majeure conditions, then the company shall be entitled to extension of time for delivery of possession of the said apartment. Authority observes that no document has been placed on record by respondent to prove what all approvals were required to start the construction, on what dates did respondent obtained those requisite approvals and whether there was occurrence of any force majeure conditions during this intervening period of 48 months from execution of agreement. It is pertinent to mention that respondent has placed on record a copy of "approval of revised building plans of group housing colony measuring 30.268 acres in Sector 88, Faridabad", however the same does not satisfy the query/concern raised by this Authority in the aforementioned lines. In fact, the Authority is not hesitant to state here that such wordings like 'from the date of getting requisite sanction from concerned authorities' as have been used by the respondent in clause 22 of the agreement are vague, arbitrary and heavily loaded in favour of the builder to shield itself from liabilities incurring on account of any delay, therefore, some content be allowed to be used for determining/computing deemed date of possession.



39. Further, with regard to the contention of respondent that the project 'RPS AURIA' is registered under the provisions of the Real Estate (Regulation and Development) Act, 2016 vide registration no.200 of 2017 extended upto 30.06.2021 due to Covid situation, therefore, the stipulated timeline for completion and handing over of project declared at the time of seeking grant of registration also got extended till 30.06.2021, Authority observes that date for completion of project under Section-4 (2) (1) (C) of the Real Estate (Regulation and Development) Act, 2016 is declared unilaterally by the promoter for the purpose of getting the real estate project registered. An allottee has no opportunity to raise any objection at that stage; therefore, this unilateral act of mentioning/declaring the date for completion of project under provisions of the Act will not abrogate the rights of the allottee under the agreement for sale entered into between the parties.

The Division Bench of Hon'ble Bombay High Court in case of Neelkamal Realtors sub-urban Pvt. Ltd. and another vs Union of India and others (Supra) has laid down as under: -

*"Section 4(2)(1)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In*





*other words, by giving opportunity to the promoter to prescribed fresh timeline under Section 4(2)(1)(C) he is not absolved of the liability under the agreement for sale.”*

40. Hon'ble Bombay High Court by taking note of provisions of Section 4 (2) (1) (C) of the Act has categorically laid down that the provisions of the Act will not re-write the clause of completion or handing over of the possession mentioned in the agreement for sale. The fresh timeline independent of the time stipulated in the agreement is given in order to save the developer from penal consequences, but he is not absolved of the liability under agreement for sale. Thus, the respondent promoter was obligated to offer possession of the unit to the complainant as per terms and conditions of the agreement, failing which complainant is entitled to claim remedies as provided under Section 18 of the Act.

Also, in case of *M/s Imperia Structures Limited and others vs Anil Patni and others, Law Finder DocId # 1758728*, the Hon'ble Apex Court has laid down as under :-

*“31. We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the complainants in 2011-2012 and the builder buyer agreements were entered into in November, 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be*





*reckoned in terms of the agreement and not the registration. Condition no. (x) of the letter dated 17.11.2017 also entitles an allottee in same fashion. Therefore, the entitlement of the complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission."*

41. As per ratio laid down in the cases referred above, the revised date of completion of the project in the declaration form under Section-4 (2) (1) (C) of the Act will not extend the date of delivery of possession as mentioned in the apartment buyer's agreement. To balance equities, 48 months from execution of apartment buyer's agreement, i.e., 03.09.2017 has been considered as the deemed date for completion of unit and offer of possession. Nevertheless, till date possession has not been handed over to complainants (after lapse of deemed date of possession dated 03.09.2017), meaning thereby that respondent has delayed in its obligation to hand over possession within a stipulated time.
42. With regard to the issue raised by complainants that respondent have demanded and collected more than 10% of the basic sale consideration, which is in violation of Section 13(1) of the Act, hence is liable for imposition of penalty, Authority observes that alleged payment of Rs.11,70,911/- against the basic sales price of Rs 56,79,072/- was admittedly paid by complainant till June 2013, i.e., prior to commencement of Real Estate (Regulation and Development) Act, 2016. It is not the case of complainants that the said amount was demanded in violation of the



terms of agreement dated 04.09.2013. As has been mentioned in preceding paragraphs of this order, after the Act coming into effect, terms of agreement are not re-written, therefore any amount collected as per terms of agreement entered into before enactment of Real Estate (Regulation and Development) Act, 2016 cannot be termed illegal per-se. Therefore, "penalising" for commission of an act that was a part of the agreement between the complainants and respondent shall amount to giving a retrospective effect to the penal provision enshrined in the Act, which is not the objective of this Act.

43. Authority observes that that there remains no ambiguity with respect to the fact that as per agreement for sale, possession of unit has not been handed over to complainants till date and feeling aggrieved by the same, complainants in exercise of their rights under Section 18 of the Act wish to withdraw from the project and demands refund of their money along with interest from respondent. However, it is also a matter of record that occupation certificate for tower T-6 has been issued by the competent authority on 25.01.2023, i.e., during the pendency of present complaint. Now, the question arises that whether after issuance of occupation certificate allottee is still within its rights under section 18(1) of the Act to withdraw from the project as is in this case. In this regard, Authority is of the view that after lapse of deemed date of possession, i.e., after





03.09.2017, right to withdraw from the project accrued in favour of complainants by virtue of Section 18(1). Even on the date of filing of captioned complainant, occupation possession had not been issued for the Tower T-6 and valid possession could not have been offered as per terms of agreement for sale. Admittedly, occupation certificate for the Tower T-6 was obtained on 25.01.2023 and as is a matter of fact, before any legally valid offer of possession could have been made, aggrieved by delay in handing over of possession complainants had already exercised their rights under Section 18 of Act and demanded refund of their amounts along with interest. Since, the right to demand refund has been exercised prior to any legally valid offer of possession complainants are well within their right to seek refund.

44. Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. Para 25 of *ibid* 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.”*

45. 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.
46. In view of the findings/observations of the authority and ratio laid down by Hon'ble Supreme Court, Authority finds it a fit case to allow complainants refund of principle amount along with interest in terms of Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017. As per Section 18 of the Act, interest shall be awarded at such rate as may be prescribed Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 provides for prescribed rate of interest which is as under:

***“Rule 15:** Interest payable by promoter and Allottee. [Section 19] – An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of Section 12. In case, allottee wishes to withdraw from the project due to discontinuance of*



*promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (1) of Section 18 or the promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:*

*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."*

47. Consequently, as per website of the State Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 21.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
48. 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 of 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;*

49. Accordingly, respondent will be liable to pay the complainants interest from the date of amounts were paid till the actual realisation of the amount.
50. It is pertinent here to mention that complainants in their complaint have alleged to have paid Rs. 60,74,259/- till 29.03.2017 against agreed consideration amount of Rs.56,79,072/- (exclusive of other charges and taxes). However, the receipts annexed with the complaint are for an amount of Rs,60,52,810/-. Hence, Authority directs respondent to refund to the complainants the paid amount of Rs.60,52,810/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2% which as on date works out to 10.75% (8.75% + 2%) from the date amounts were paid till the actual realisation of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order and said amount works out to Rs.1,20,38,945/- as per detail given in the table below:





Principal amount	Interest accrued till the date of order i.e. 21.11.2023	Total amount payable to Complainants (Principal amount + interest)
Rs.60,52,810/-	Rs.59,86,135/-	Rs.1,20,38,945/-

51. The complainants are also seeking compensation on account of litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*", has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 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 expenses 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 and legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking relief of litigation cost.
52. Further, complainants are seeking certain reliefs under clause (ii), (iii), (iv) and (v) of their prayer, however, said reliefs are neither part of their pleadings nor pressed by them during arguments. Hence, complainants' prayer with respect to said reliefs cannot be allowed.




## H. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent is directed to refund the entire amount of Rs.1,20,38,945/- to the complainants.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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

  
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**Dr. GEETA RATHEE SINGH**  
[MEMBER]

  
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**NADIM AKHTAR**  
[MEMBER]