



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	954 of 2021
Date of filing.:	25.02.2020
First date of hearing.:	27.08.2020
Date of decision.:	31.10.2023

### 1. COMPLAINT NO. 954 OF 2021

Pushpinder Singh s/o Dr. Gurcharan Singh  
R/o Utopian Remedies Pvt Limited,  
Plot No. 15-A, NIT Industrial Area, Faridabad

....COMPLAINANT

VERSUS

1. M/s BPTP Ltd.  
2. M/s Countrywide Promoters Pvt Ltd.  
3. M/s BPTP Parklands Pride limited  
All having registered office address at:  
M-11, Middle Circle, Connaught Circus,  
New Delhi -110001

....RESPONDENTS

### 2. COMPLAINT NO. 955 OF 2021

Renu Kohli w/o Pushpinder Kohli  
R/o Utopian Remedies Pvt Limited,  
Plot No. 15-A, NIT Industrial Area, Faridabad

....COMPLAINANT

VERSUS

1. M/s BPTP Ltd.  
2. M/s Countrywide Promoters Pvt Ltd.  
3. M/s BPTP Parklands Pride limited  
All having registered office address at:

M-11, Middle Circle, Connaught Circus,  
New Delhi -110001

...RESPONDENTS

**3. COMPLAINT NO. 956 OF 2021**

Renu Kohli w/o Pushpinder Kohli  
R/o Utopian Remedies Pvt Limited,  
Plot No. 15-A, NIT Industrial Area, Faridabad

...COMPLAINANT

VERSUS

1. M/s BPTP Ltd.  
2. M/s Countrywide Promoters Pvt Ltd.  
3. M/s BPTP Parklands Pride limited  
All having registered office address at:  
M-11, Middle Circle, Connaught Circus,  
New Delhi -110001

...RESPONDENTS

**4. COMPLAINT NO. 957 OF 2021**

Swaran Singh S/o Late Sh. Ram Singh  
R/o Shalini Metal Indl  
15 Industrial Area Faridabad

...COMPLAINANT

VERSUS

1. M/s BPTP Ltd.  
2. M/s Countrywide Promoters Pvt Ltd.  
3. M/s BPTP Parklands Pride limited  
All having registered office address at:  
M-11, Middle Circle, Connaught Circus,  
New Delhi-110001

....RESPONDENTS

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

**Present: -**           Mr. Akshat Mittal, Counsel for the complainant  
                              in all cases.  
                              Mr. Hemant Saini, Counsel for the respondent in all cases.

**ORDER (NADIM AKHTAR- MEMBER)**

1. Present complaints have 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 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.
2. This order shall dispose off all four captioned complaints. Captioned complaints are taken up together for hearing as they involve the same issues pertaining to the same project and against the same respondent only. This order is passed taking complaint no. 954 of 2021 titled Pushpinder Singh vs M/s BPTP Limited and ors as lead case.

**A. UNIT AND PROJECT RELATED DETAILS**

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Parklands Pride, Sector-76, Faridabad.
2.	Nature of the project.	Residential



4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	X13-06
6.	Date of allotment	11.05.2007
7.	Date of builder buyer agreement	Not executed
8.	Due date of possession	11.05.2010 (Taken a 3 years from date of allotment)
9.	Basic sale consideration	₹ 26,50,500/-
10.	Amount paid by complainant	₹ 27,77,336/-

**B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT**

4. Facts of complaint are that the complainant had applied for a plot in the project of the respondent namely; "Parklands Pride" situated at Sector-76, Faridabad, Haryana in the year 2006. The booking was entered between the parties qua the plot bearing no. X13-06 in the project in question. The basic sale price of the plot was fixed at ₹ 26,50,500/-. It is pertinent to mention that no plot buyer agreement was executed between the parties qua the plot in question.
5. It is alleged by the complainant that as per assurances given at the time of booking, possession of the unit was to be handed over to the complainant



by the year 2008. That from the beginning the respondent company started issuing unreasonable payment demand requests, to which the complainant objected but received no response from the respondent.

6. The respondent raised unreasonable demand qua EEDC, even though the said charges are not made out and the same stands stayed by the Hon'ble High Court.
7. The respondent company started levying interest on the allegedly delayed payments and issuing threats of cancellation of the plot and forfeiture of amounts in case the unreasonable demands were not complied with. Respondent issued a 'termination/cancellation intimation' dated 25.03.2013, through which the respondent sought cancellation of the unit and forfeiture of the amounts. Said cancellation was never brought to the knowledge of the complainant.
8. Vide an SMS dated 07.08.2013, respondent provided last and final opportunity to avoid cancellation to the complainant. Complainant acting upon the same had made a request to the respondent company to provide the ledger accounts of the plot in question. Complainant sent email dated 11.08.2013 to the respondent seeking assistance with the same but received no response.



9. Thereafter, respondent again issued another letter dated 15.06.2015 titled termination/cancellation in respect of unit no. X13-06 in project 'Parklands' at Faridabad, Haryana. However, later on vide letter dated 09.10.2017 respondent issued an offer of possession to the complainant in respect of the plot bearing no. X13-06 and further issued reminder/demand letters dated 27.12.2017, 07.03.2018 and 09.04.2018 to the complainant.
10. Respondent company has acted in a high headed manner and issued several irregular demands from the complainant including but not limited to demand of ₹ 4,15,552/- qua EEDC, over charging of IDC against the government notice to the tune of ₹ 1,34,390/-; illegal demand of STP and Electrification charges to the tune of ₹ 3,00,490/-. It is submitted that from the replies received from the Authorities in RTI applications, complainant was made to understand that the said charges of STP and ESS are already part of EDC Charges.
11. That the Resident Welfare Association, i.e, Parkland Owners Association, continuously pursued the above illegal demands of the respondent with the government agencies.
12. The respondent has miserably failed to deliver a valid possession to the complainant within the time frame promised at the time of booking. As such it is submitted that the respondent has failed to deliver possession of the unit even after more than 15 years of the payment of the booking



amount towards the same. The respondent company has still not obtained the final completion certificate from the concerned Authorities and merely have a partial completion certificate.

13. That the respondent company is charging maintenance charges from the complainant. Said demand of maintenance charges is totally vexatious, unwarranted and uncalled for, given the fact that valid possession has not been given till date.
14. Hence, the complainant is left with no other option but to approach the Authority seeking possession of the booked unit along with delay interest till the date a fresh offer of possession is issued to the complainant.

### **C. RELIEF SOUGHT**

15. That the complainant seeks following relief and directions to the respondent:-
  - i. To direct the respondents to immediately hand over the physical possession of the unit in question to the complainant allottee, coupled with the occupation certificate after rectification and clarification of all the payment/demands thereto.
  - ii. To direct the respondents to place on record the statement of accounts and ledger account pertaining to



the unit in question, with clarification on each and every payment demand under the relevant head.

- iii. To direct the respondents to set aside the cancellation/termination of the unit in question for the reasons stated in the complaint.
- iv. To direct the respondents to compensate for the delay in offer of possession of the apartment complete in all respects, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, on the entire deposited amount of Rs.27,77,336/- (Rupees Twenty Seven Lakh Seventy Seven Thousand Three Hundred & Thirty Six only) which has been deposited against the property in question so booked by the complainant.
- v. To direct the respondents to set aside the maintenance charges, holding charges, interest on alleged delayed payments etc. being illegally charged by the respondents.
- vi. To direct the respondents to set aside and waive off the illegal amounts being charged qua Enhanced E.D.C., 'S.T.P. Charges', E.S.S./ electrification





charges', I.D.C. Charges' etc. for the reasons stated in the complaint.

- vii. To impose penalty on the respondents under Section 61 of the Act, for violation of the provisions of the Act.
- viii. To direct the respondents to pay a sum of Rs. 20,00,000/- on account of grievance and frustration caused to the complainants by the miserable attitude of the respondents and deficiency in service and for causing mental agony caused to the complainants, along with interest from the date of filing the present complaints till its realization.
- ix. To direct financial audit of the respondents by appointing Financial Auditor under section 35 of the Act.
- x. The registration, if any, granted to the Respondent for the project namely; "Parklands Pride", situated in the revenue estates of Faridabad, District Faridabad, Haryana, under RERA read with relevant Rules may be revoked under Section 7 of the RERA for violating the provisions of The Act.



- xi. The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-;
- xii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

16. During the course of arguments, learned counsel for the complainant submitted before the Authority that complainant in the present complaint had booked a unit in the project of the respondent in the year 2006 and was allotted plot bearing no. X13-06 vide letter of allotment dated 11.05.2007. Despite a lapse of more than 15 years from the date of allotment, respondent failed to execute a plot buyer agreement qua the plot in question with the complainant. Taking a period of 3 years from the date of allotment as a reasonable period of time to deliver possession, respondent should have issued an offer of possession to the complainant by 11.05.2010. The alleged offer of possession dated 01.07.2009 issued by the respondent is challenged here in firstly on the ground that it was never received by the complainant. Secondly, said offer of possession was bad in the eyes of law as it had been issued without completing the project, with there being no boundary walls or no electricity infrastructure even till date. Also the alleged offer of possession dated 01.07.2009 was even prior to the part completion certificate dated 09.09.2010. Till date the respondent is yet



to receive competition certificate for the project in question. Thereafter, respondent had raised illegal and exorbitant payment demands from the complainant qua EEDC, IDC, STP and electrification without providing any justification for the same.

17. Learned counsel for the complainant further submitted that the complainant has only received physical letter of offer of possession dated 09.10.2017. Again vide said offer, respondent company has raised a demand of Rs 21,10,612/- as total payable amount where as complainant has already made a payment of Rs 27,77,336/- to the respondent against basic sale consideration of ₹ 26,50,500/-. These charges were disputed by the complainant but respondent failed to address the same. As far as the alleged letter of termination/cancellation dated 25.03.2013 and 15.06.2015 are concerned, these letters hold no weight as the respondent had failed to follow due process of law at the time of issuing the same. Till date the respondent has retained the huge amount of Rs 27 lakh paid by the complainant and is time and again issuing demand letters for payment. As such the allotment of the plot in question is still in the name of the complainant, therefore these letters of cancellation are void.
18. Parties have been in contact throughout, i.e., from the year 2006 till date with regard to the possession of the plot in question. Various communications between the parties have already been placed on record



vide application dated 02.08.2022. This shows that the complainant had been continuously pursuing the respondent company seeking possession of the booked unit but received no proper redressal. Learned counsel for the complainant further averred that in present case, the respondent has delayed making a valid offer of possession to the complainant, due to which an extra ordinate delay has occurred. However, said delay cannot be attributed to the complainant after having already made payment of more than 100 % of the basic sale price in the year 2012-2013 itself. The fact that the prices of the said piece of land have escalated over the years does not diminish the rights of the complainant qua the plot in question as the default was on the part of the respondent.

19. Even as on date the respondent is not in position to deliver valid offer of possession to the complainant as the project has yet to receive completion certificate and that the respondent has yet to provide electricity infrastructure at the site. The act and conduct of the respondent is in complete contravention to the provisions of the RERA Act. Hence, the complainant is left with no other option but to approach the Authority seeking possession of the booked unit along with delay interest till the date a fresh offer of possession is issued to the complainant

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

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Learned counsel for the respondent filed detailed reply in the matter pleading therein:

20. That the captioned complaint relates to the project which is not registered with the HRERA as the completion certificate/occupancy certificate of the project was obtained by the respondents on 09.09.2010 before the inception of HRERA. Any project for which completion or occupancy certificate has been applied or already obtained before the applicability of the Act and Rules are beyond the ambit of the RERA Act,2016. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
21. The project in question was being developed by the respondent in the year 2006-2010. In 2006, the complainant approached the respondents for booking of a plot in the project 'Parkland Plots' being developed by the respondent in Faridabad. Respondent vide allotment letter dated 11.05.2007 allotted plot bearing no. X13-06 to the complainant admeasuring 302 sq yds.
22. That the project has already received partial completion certificate on 09.09.2010. As per section 3(2)(b) of the Real Estate (Regulation and Development ) Act. 2016, registration of a project under RERA is not required if the promoter has received completion certificate. Therefore, the project falls outside the purview of RERA.



23. That after completion of entire development works, possession of the plot has already been offered to the complainant vide offer of possession dated 01.07.2009. However, the complainant failed to clear the demand qua the offer of possession and to get the conveyance deed executed. That the demands raised by the respondent are as per the terms agreed between the parties at the time of booking.
24. That when the complainant deliberately chose not to make payments of balance sale consideration, constrained respondent had no choice but to issue letter of cancellation/ termination dated 15.06.2015. It is submitted that post issuance of the termination letter, respondent being a customer centric company gave last and final opportunity to the complainant to clear all pending dues but the complainant failed to do so.
25. It is submitted that the EDC, IDC, STP and ESS charges are levied on the complainant as per the booking form and the complainants were aware about the same since the beginning.
26. The complainant through this present complaint is raising frivolous allegations against the respondent just to gain sympathy and cover up its default on account of delay in making timely payments.
27. Mr. Hemant Saini, learned counsel for the respondent further argued that the project in question has received completion certificate in toto in 09.09.2010. Possession of the plot was offered to the complainant vide offer of possession dated 01.07.2009. However, the complainant failed to



come forward. Captioned complaint cases form a special circumstance where a family had collectively booked 4 plots in the project and thereafter it became difficult for them to make payment qua each of the plot. The basic sale price of Rs 26,50,500/- was exclusive of the EDC, IDC and PLC charges and the complainant has only made a payment of Rs 27,77,336/-. The complainant stopped making further payments for reasons best known to him. The allotment of the complainant in present complaint never reached the stage of execution of a plot buyer agreement because the complainant failed to sign the plot buyer agreements sent to him. As per Clause D of the booking form complainant was made aware that the respondent company reserves the right to cancel the allotment of the complainant and cancel the provisional registration and that the complainant will only be entitled to refund of the paid amount @9% simple interest. Since the allotment of the complainant has already been cancelled, complainant is only entitled to seek refund of the paid amount and cannot claim possession of the plot in question. No documents were signed between the parties which crystallised the terms of contract between both the parties. Hence there is no basic foundation to the claims of the complainant seeking possession of the booked plot.

28. Learned counsel for the respondent argued that as per the terms of offer of possession dated 01.07.2009, it has been specifically mentioned that execution of a plot buyers agreement is a prerequisite for taking



possession of the plot. Since the complainant in present complaint failed to sign the plot buyer agreement, therefore, the complainant cannot rightly lay claim seeking possession of the plot. He further pressed that the issue pertaining to the different addresses of the complainant and receipt of offer of possession dated 01.07.2009 by the complainant has already been adjudicated by the Authority vide its order dated 21.03.2023 in para 6(ii) and the arguments are not being repeated for the sake of brevity. Throughout the proceedings complainant has failed to prove as to why he has failed to accept the offer of possession dated 01.07.2009. Since 2009 till 2013, complainant chose not to press upon his rights or agitate the matter. Respondent had also sent a letter dated 27.02.2012 to the complainant for execution and registration of conveyance deed but the complainant failed to come forward. The offer of possession dated 01.07.2009 was a just and valid offer of possession as the same was issued on the basis of approved zoning plan dated 20.02.2008 and the complainant had duly received the offer of possession at the address mentioned in the Proforma-B. Respondents had duly abide by the policy issued by the Chief Administrator, HUDA vide Memo dated 13.11.2007.

29. Further, the allegations of the complainant with regard to the demands raised vide letter dated 27.02.2012 are baseless as Rs 26,50,500/- was only the basic sale price which was exclusive of charges including EDC, IDC, Club membership, Utility Connection Charges, stamp duty and





registration fees for conveyance deed. These charges had been duly conveyed to the complainant at the time of booking and the complainant defaulted in making payment of the requisite amount despite issuance of regular demand/reminder letters. He made reference to the clause G(i) of the booking form vide which the respondent had clearly stated that "EDC and any enhancement thereof by the government shall be charged extra". Further respondent vide its email dated 15.12.2014 also explained the demand of Enhanced EDC and further requested the Complainant to either pay off or to provide the respondent with a Bank Guarantee of the same. Thus, even in 2014, the complainant chose not to either give the bank guarantee or agitate the issue before any court of Law. Hence, raising such allegation in 2021 reflects the mala fide intention of the complainant to avail monetary benefit now that the prices of the property have gone up.

30. Mr. Hemant Saini, learned counsel for the respondent further drew the attention of the Authority to the facts that respondent company kept on pursuing the complainant for taking possession of the plot and executing conveyance deed which is evident from the various demand letters placed on record and the offer of possession issued in the year 2009 and subsequently in the year 2017. Even if the complainant alleges receipt of offer of possession dated 01.07.2009, he has accepted to having received offer of possession dated 09.10.2017. Throughout the years complainant chose not to agitate the letter of termination dated 25.03.2013 or

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15.05.2015 and neither chose to accept the offer of possession. Complainant cannot be allowed to pursue the present complaint on its whims and fancies after a gap of nearly 11 years from the date of first offer of possession as being highly time barred. Learned counsel for the respondent placed reliance on judgement passed by Hon'ble Supreme Court in case titled **K. S Vidyanadam Vs Vairavan (1997) 3 SCC 1** wherein it is observed that silence of the vendee for a long time will make it inequitable to give relief of specific performance. The plaintiff must perform his part within a reasonable period of time. He further argued that complainant in this case is seeking relief in terms of specific performance even without the execution of a valid contract. Hon'ble Supreme Court in case titled as '**Bharati Knitting Co. Vs DHL Worldwide Express Courier Division**' 1996 SCC (4) 704 has observed that when there is a specific term in the contract, parties are bound by the term in the contract. In present complaint there is no specific term between the parties qua the plot in question, the allotment of the complainant towards plot bearing no. X13-06 was a provisional allotment, terms of which were never crystallised. Now there is no valid contract between the parties and in absence of a valid contract Authority cannot create an agreement between the parties. Complainant is only entitled to receive refund of the paid amount along with interest. As observed in **Smt. Mayawati Vs Smt Kaushalya Devi, 1990 (3) SCC 1** by Hon'ble Apex Court that in case of a



specific performance, jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. Here there is no contract between the parties as the complainant chose not to execute the plot buyers agreement. Complainant in this case is seeking relief in terms of specific performance. However, as per judgement passed by Hon'ble Supreme Court in *Desh Raj Vs. Rohtash Singh, Civil Appeal No.921 of 2022: decided on 14.12.2022*, it is held that where there was clear intention of the parties to treat time as essence of the contract and where there was undue delay on behalf of the respondent to institute the suit, relief of specific performance cannot be granted. Therefore, the relief claimed by the complainant cannot be accepted upon.

31. Learned counsel for the respondent further pressed that the complainant(s) in captioned complaints had booked 4 plots in the project of the respondent and were unable to fulfil demands pertaining to all four. They chose to retain the plots by making part payments but were unable to pay the remaining outstanding demands. He further stated that these complainants have been blowing hot and cold as they want possession of plot in question, whereas they themselves choose not to make payments as per choice. Complainants purposefully chose not to pursue the allotment to seek time for arranging funds for four plots. They never agitated their rights nor raised any objection with the respondent through out these years. Now that the prices of the property in question have gone up.



complainants have taken to this Authority for maliciously utilising the law of the land in their interest after not pressing for their right for so many years. He placed reliance on judgement passed by Hon'ble Supreme Court in case titled **Saradmani Kandappan Vs S Rajalakshmi AIR 2011 SCC 3234** and others where it is observed that time is of essence of contract in matters pertaining to sale of immovable property.

32. In view of the aforementioned observations, learned counsel for the respondent submitted that the complainants in the captioned complaint are not entitled to seek relief of possession after keeping silent for more than 15 years. Complainants are only entitled to seek refund of the paid amount along with interest after forfeiture of earnest money.

**E. ISSUES FOR ADJUDICATION**

33. (i) Whether the Authority has jurisdiction to entertain the present complaint?  
(ii) Whether the cancellation/termination dated 15.06.2015 was valid or not?  
(iii) Whether the Complainant is entitled to the reliefs claimed by it particularly possession alongwith delay interest?

**F. OBSERVATIONS AND FINDINGS OF THE AUTHORITY**

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 as follows:



34. Respondent has raised an objection that the Authority does not have jurisdiction to decide the complaint on following grounds:-

- (i) Present complaint is barred by limitation as complaint has been filed after 11 years of cause of action which is issuance of offer of possession dated 01.07.2009.
- (ii) That the project had already received completion certificate on 09.09.2010 so the project does not get covered into definition of 'on-going project' and is not within purview of RERA Act,2016.
- (iii) Reliefs sought by the complainant are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum.

With respect to the objection of respondent that the complaint is barred by limitation, the reference is made to the judgement of **Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise.** It is to mention here that the promoter has till date failed to fulfil his obligation pertaining to delivery of possession of plot in question because of which the cause of action is continuing. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act,



2016 as the Authority set up under that Act being quasi-judicial and not a Court. In the present complaint, stage of actual handing over of possession or final settlement has not been reached. Complainant had filed complaint for seeking relief of actual handing over of possession which has not yet been delivered by respondent. So, objection raised by respondent on ground of limitation does not have any merit and is therefore rejected.

With respect to objection raised by respondents that the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project in question is not an 'on-going project' for the reason that project was completed before the RERA Act, 2016 came into force and had also received completion certificate on 09.09.2010. In this regard, it is observed that the issue as to whether project shall be considered as "on-going project" has been dealt with and settled by the Hon'ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

*" 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while*



*imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."*

Wherein Hon'ble Apex Court held that the projects in which completion certificate has not been granted by the competent authority, only such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

In light of aforesaid observations, Authority observes that respondent had received part completion certificate on 09.09.2010 not the completion certificate. Moreover, the receipt of part completion certificate does not absolve the respondent of its obligations cast upon it pertaining to handing over of possession of plot and execution of conveyance deed. The RERA Act, 2016 was enacted to ensure that both parties, i.e., respondent-promoter as well as complainant-allottee duly fulfils their respective obligations as per agreement for sale executed between them. Herein, the obligation of respondent to actual handover possession of plot still remains which is reoccurring cause of action and the allottee is well within its right to avail relief/remedy under the RERA Act, 2016.



Furthermore, it has been clarified by this Authority in its numerous orders that the term 'on-going project' is only used in Section 3 of RERA Act,2016 which deals with only one of the obligation of the promoter under RERA Act,2016 i.e. to get the project registered. There are various other obligations of promoter illustrated in the RERA Act and under those provisions it is nowhere provided that those obligations are only limited to registered projects.

It is to mention here that no doubt that proper formal agreement was not executed between the parties but by way of allotment letter dated 11.05.2007, the respondent had accepted the money from complainant for allotting a specific plot in its real estate project and the parties had been acting in relationship of allottee and promoter. Definition of allottee, promoter and real estate project is referred. As per S.2(d) of the RERA Act, "allottee" is defined as follows:

*(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:*

Definition of "promoter" under section 2(zk) is provided below:

*(zk) "promoter" means,—  
(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for*





*the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

Further, as per Section 2(zj) & (zn) of the RERA Act, 2016. "project" & "real estate project" are defined respectively as follows:

*(zj) "project" means the real estate project as defined in clause (zn):*

*(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

A conjoint reading of the above sections shows that respondents are promoters in respect of allottees of units/plots sold by it in its real estate project-Parklands Pride and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainants and respondents is established and the issues/transaction pertains to the real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

*An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to*



*protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;*

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. So, the issues involved in complaint and relief sought are well within the ambit of the Authority. Plea of respondent raised in written arguments is that reliefs sought are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum does not have merit even on the ground that Section 79 of RERA Act exclusively bars the jurisdiction of civil courts with respect to any matter which is the subject matter (real estate transaction) under the Act and falls within the purview of the Authority, or the Real Estate Appellate Tribunal. Accordingly, the objections raised by respondent on ground of maintainability which are mentioned in para 35 clause (i), (ii) and (iii) of this order stands dealt with and are declared devoid of merit.

35. Factual matrix of the case is that the complainant in present complaint had booked a plot in the project of the respondent in the year 2007 and was allotted the plot X13-06 having area 302 sq yds vide allotment letter dated 11.05.2007.



Admittedly no plot buyer agreement was executed between the parties. In the absence of execution of a plot buyer agreement, Authority cannot rightly ascertain as to when the possession of said unit was due to be given to the complainant. In these circumstances, reliance is placed upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. Taking a period of three years from the date of issue of letter of allotment i.e 11.05.2007, possession of the unit should have been delivered to the complainant on 11.05.2010. Therefore, the deemed date of delivery of possession works out to 11.05.2010.

36. As per observations recorded in the aforementioned paragraph possession of the plot bearing no. X13-06 should have been delivered 11.05.2010. Respondents had taken a stand that an offer of possession was issued to the complainant on 01.07.2009 on the address-'Utopian Remedies, Plot no. 15-A, NIT Industrial area, Faridabad'. Per contra, stand of the complainant is that he has never received said letter as at that time he was residing on address-A-668, Sarita Vihar, New Delhi. Further, it is alleged by the complainant that said offer of possession was not a valid offer as it was issued without obtaining occupation certificate/completion certificate from the competent Authority, to show that the project is complete and habitable for living. As per the submission of the



respondent, offer was issued on 'Utopian address' which is the same address as provided by complainant itself in Proforma-B, therefore, receipt of it cannot be denied by complainant. Further, respondents stated the offer of possession had been issued after approval of zoning plans on 20.02.2008, which as per the instructions of Chief Administrator, HSVP, dated 13.11.2007 was sufficient to offer possession of a plot to an allottee. Further, the block in which the plot of the complainant is situated had received part completion certificate on 09.09.2010.

37. A bare perusal of the letter dated 13.11.2007 containing the instructions of Chief Administrator, HSVP, regarding zoning plan would reveal that the said instructions pertain specifically to projects being developed by Haryana Shehri Vikas Pradhikaran. Further, as per said instructions, it is required to provide a copy of the zoning plan alongwith letter of possession. In present complaint, firstly the project of the respondent does not fall into the category for which the aforementioned specifications have been issued by Chief Administrator, HSVP. Secondly, though the respondent had issued an offer of possession to the complainant after obtaining approvals of zoning plan but a copy of the same was not provided to the complainant along with letter of possession. Therefore, this plea of the respondent to ascertain that the offer of possession dated 01.07.2009 was a legally valid offer cannot be accepted. Regarding issue of address, it is observed that complainant denies receipt of offer of possession on 'Utopian address' but accepts receipt of letter with subject 'Request for



execution of conveyance deed dated 27.02.2012 ' issued on 'Sarita Vihar address' in its application dated 02.08.2022 for placing on record relevant document/correspondence. In said application, certain emails with respondent have been attached by complainant of year 2013. One such mail dated 12.08.2013 sent by complainant to respondent is placed at pg no. 41 of complaint with subject-'Notice for cancellation of plots in sector-76, X-13 plots 6,7,8,9 in BPTP Parklands'. In said email, complainant has written that *'you are once again requested to kindly send the accounts so that we may be able to understand how the company has arrived at the figures sent to us. Kindly do the needful before threatening us with cancellation of plots. Till date, either our mails have gone unanswered or have been evasive regarding necessary details. We were surprised to hear from your customer care executive, Ms. Ankita, that a letter of cancellation sent to our address has been returned from Sarita Vihar, New Delhi, while our mailing address has always been-C/o Utopian Remedies P.Ltd Plot no. 15, A,NIT Industrial area , Faridabad.'* So, the complainant itself failed to clearly establish the fact that as to when his address got changed from 'Sarita Vihar' to 'Utopian Remedies'. No letter/communication of any kind has been placed on record by complainant whereby respondent was apprised about change in address. Be the case as it may be, even if it is assumed that complainant was in receipt of offer of possession dated 01.07.2009, fact remains that at the time when respondent had issued offer of possession dated 01.07.2009 to the complainant, respondent had not received completion



certificate for the said plot. Therefore, the offer of possession dated 01.07.2009 cannot be called a valid offer of possession.

38. Admittedly the complainant in the present case been allotted the plot in question vide letter of allotment dated 11.05.2007. As per observations recorded in para 36 of this order it has been observed that respondent should have delivered the possession of the unit by 11.05.2010. Though the respondent had issued an offer of possession to the complainant on 01.07.2009, however, the same was without obtaining completion certificate. The respondent had received part completion certificate qua the unit of the complainant on 09.09.2010. After offer of possession, the respondent issued a letter dated 27.02.2012 to complainant with subject-‘Request for execution and registration of conveyance deed upon payment of revised external development charges and other charges’ alongwith demand of Rs 13,71,000/-. Reminder for said payment was issued on 30.05.2012 and 22.01.2013. Thereafter, both parties were in contact with each other via emails of year 2013. Thereafter, final demand notice was issued by respondent on 21.01.2014. Email dated 12.03.2015 sent by respondent conveying details of outstanding due amount as BPTP-Rs 21,71,856/- ,BPMS-Rs 72,620/- and stamp duty-Rs 1,79,200/- to complainant. Then, termination notice was issued by respondent on 15.06.2015. Subsequent thereafter, a letter dated 09.10.2017 was issued by respondent with subject-‘Offer of possession of plot no. X-13-06-Pending documents/ Outstanding dues’ on Sarita Vihar address of complainant, receipt of which is admitted by complainant.



39. The principal argument of the respondent is that it had time and again approached the complainant to come forward for taking possession and for execution of conveyance deed upon payment of remaining charges. However, the complainant failed to do so. Complainant was again issued an offer of possession dated 09.10.2017 with respect to the plot in question, i.e; after already having the knowledge of receipt of part completion certificate but the complainant again failed to pay heed to the same. Most contentious issue in this plaint is that according to complainant, offer of possession made to the complainant in 01.07.2009 was not a proper offer of possession because it was supposed to have been offered after receiving part completion certificate in the year 2010 and thereafter, the various communications issued by the respondent qua possession of the plot in question are incomplete as there was deficiency in basic services at the site of the project. Complainant has placed reliance on the fact that Resident Welfare Association, i.e, Parkland Owners Association, continuously pursued the illegal demands and conduct of the respondent with the Government Agencies. It is also the argument of the complainant that the site is devoid of electricity connection.

40. The facts set out in the preceding paragraph demonstrate that the complainant in present complaint is principally arguing the fact that the respondent company is not in a position to deliver proper possession of the plot in question to the complainant as the respondent had failed to provide electricity infrastructure at the site of the project. The complainant has time and again

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refused to take possession of the plot on grounds that the respondents were initially not in possession of completion certificate to enable the respondents to issue a valid offer of possession and further that the respondents had failed to provide electricity infrastructure at the site. It is also alleged that respondent no. 1 has raised exorbitant demand from the complainant despite having received more than the basic sale consideration of the plot.

41. Authority observes that the respondent in this case had obtained a partial completion certificate on 09.09.2010 issued by Town and Country Planning Department in respect of 154.30 acres land out of their colony which includes the land parcel on which the plot of the complainant is situated. A presumption of truth is attached to the certificate granted by Town and Country Planning Department. Such a certificate could have been granted only after due diligence on the part of concerned department. Meaning thereby that at the time of grant of part completion certificate it has been certified that the required developmental works in residential colony at Faridabad for residential area measuring 154.30 acres are available at site. In said certificate it has been specifically mentioned that the development works for which the certificate is being issued are water supply, sewerage, storm water drainage, roads, horticulture and electrification. In view of the part completion certificate, the unmistakable conclusion is that the land parcel on which the plot of the complainant is situated was available for habitation since 09.09.2010.





42. It is the contention of the complainant that complainant was not made aware of with regard to the receipt of part completion certificate by the respondents. On perusal of documents placed on record it is observed that after receipt of part completion certificate, respondents had issued letter dated 27.02.2012 to the complainant for execution and registration of conveyance deed upon payment of revised EEDC and other charges. Respondents further issued reminder letters to the complainant to come forward and proceed with the formalities with regard to the handing over of possession. However, the complainant failed to come forward. It is pertinent to observe that throughout the period of 2009 till 2013 complainant has not agitated the offer of possession dated 01.07.2009 with the respondents or any other competent Authority. It was only after the respondents had issued letter of termination dated 25.03.2013, that the complainant responded to the respondent vide email dated 26.03.2013 seeking copy of ledger of plots booked in the captioned complaints bearing no. X13-06,07,08 and 09. Further, upon perusal of documents placed on record by complainant vide application dated 02.08.2022, complainant has placed on record copy of email communications with respondent company in the year 2013 after receipt of letter of termination wherein the complainant has agitated the arbitrary termination and further requested the respondent to provide copy of ledger account so as to enable the complainant to make further payments. In said communication complainant also agitated the demand raised on account of EDC, IDC, Electrification and STP charges.



43. In view of above observations, it can be deduced that on 27.02.2012, when the respondent issued the letter for execution and registration of conveyance deed, complainant was aware of the fact that respondent company has already issued an offer of possession in respect of the plot bearing no. X13-06, and was further issued latest statement of account dated 28.02.2012 along with said letter. The title of the plot could be legally handed over to the complainant as on 27.02.2012 after receipt of part completion certificate dated 09.09.2010. However, instead of taking over possession, the complainant chose not to respond to the communications of the respondents. Nothing has been placed on record by the complainant to show that he faced any hindrance in taking over possession of the plot after 27.02.2012. Complainant chose to remain silent qua the booking in the project of the respondent since 2009 till the year 2013 that is until the respondent had issued letter for termination dated 25.03.2013 after pursuing the complainant for making payment of outstanding balance amount. Even then the complainant raised frivolous grounds seeking ledger of accounts whereas the same had already been provided to the complainant vide letter dated 28.02.2012. The complainant has not placed on record any documentary evidence or email, or any written letter stating that due to the issue of electricity, complainant was unable to make use of its plot. Further, the complainant has not placed on record any documentary evidence wherein the complainant has challenged the offer of possession dated 01.07.2009, statement of accounts issued by the respondent or the issue of unavailability of electricity connection

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at the site before any competent Authority until the filing of this complaint. It is worthy to note that the complainant has deposited an amount of Rs27,77,336/- towards the booked plot. It is astonishing on the part of the complainant as to not agitate its rights until the year 2021 for the plot in question. The complainant was in knowledge that it can legally take possession of its plot on 27.02.2012. However, the complainant failed to take proactive measures with regard to the same till filing of present complaint. It seems that the complainant is trying to make use of later day events in support of its claim. Fact of the matter is that the plot in question had received part completion certificate on 09.09.2010 from Town and Country Planning Department certifying that the plot bearing no. X13-06 has been in a habitable position since then. After the complainant was made aware of the fact that the possession of the plot could be legally handed over as on 27.02.2012 upon execution of conveyance deed, it was the duty of the complainant to approach the respondent and begin formalities with regard to taking over of possession. In case the complainant had any issue or grievances with the demands raised by the respondent or receipt of part completion certificate, complainant should have agitated its right before appropriate authority. However, the complainant neither took the possession of the allotted plot nor raised any grievances against the alleged letter dated 27.02.2012. Complainant for reasons best known to him chose to sit over its rights for an inordinate amount of time.



44. On the other hand, respondent too failed to proactively approach the complainant. Admittedly, complainant delayed taking over of possession of the allotted plot since the initial offer of possession 01.07.2009, which was not valid offer as respondent had received part completion certificate on 09.09.2010. Respondents issued letters to the complainant for taking over of possession till the year 2013. Thereafter, the respondent issued letter for cancellation/termination dated 25.03.2013 to the complainant but respondents did not pursue said cancellation and failed to refund the amount paid by the complainant. Respondents should have acted in a bonafide manner and returned the amount paid by the complainant. Rather the respondent again issued a demand notice for payment of outstanding amount on 22.10.2014. Thereafter, a second letter of termination dated 15.06.2015 was issued to the complainant but again the respondent failed to refund the amount. Further the complainant was issued second letter of offer of possession dated 09.10.2017 making the alleged termination void. Respondent thereafter issued reminder letters to the complainant till 2018 for making payment of balance amount. No communication has been placed on record between the parties since 2018 till the filing of present complaint to establish further correspondence. Even the respondent failed to follow a concrete plan of action with regard to the allotment of plot to the complainant when the complainant had defaulted in accepting the offer of possession and making payments on account of maintenance charges and holding charges, respondents should have cancelled the allotment of the



complainant and refunded the paid amount after forfeiture of earnest money. Rather, the respondents also chose not to act upon the allotment of the complainant and further retained the amount paid by the complainant for more than 15 years.

45. As is evident from the above facts, both parties failed to actively pursue their interests qua the plot in question and chose to remain silent until the filing of the present complaint. Complainant should have agitated its rights before the appropriate Authority in the year 2013 itself. Whereas the respondents should have cancelled the allotment of the complainant immediately in case of continuous default in taking over of possession. Fact of the matter is that the plot bearing X13-06 is allotted to the complainant and still stands in his favour. Respondent has already issued offer of possession/letter for execution of conveyance deed in favour of the complainant. Throughout the years from the date of allotment both parties have blown hot and cold with regard to complying with their obligations pertaining to the plot in question. As is apparent from the facts and submissions, both the complainant and respondents have defaulted in their conduct and chosen to stay silent until the filing of present complaint. It is the contention of the respondent that the complainant slept over its rights and is only now agitating the matter when the prices of the property has gone up. In light of this submission, it is observed that though the complainant did not actively pursue its allotment, however, even the conduct of the respondent was arbitrary and to an unfair advantage. The offer of possession issued by the

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respondent was initially without statutory approvals and cancellation of allotment cannot be sustained on such defective 'offer of possession'. Further even after 09.10.2017, the acceptance of offer of possession was dependent upon settlement of illegal demands and levy of unjustified interest and charges on the part of respondents. Complainant could not have abruptly accepted the offer of possession without proper acknowledgement of payable and receivable amounts. Though the complainant has delayed in pressing its relief but the said fact does not diminish the rights of the complainant qua the plot in question after having invested a huge amount of ₹ 27,77,336/- . Reliance is placed upon judgement passed by Hon'ble Supreme Court in "**Uppal Trehan Vs DLF Home Developers Ltd**" wherein it is observed that in case of illegal demands and possession being conditional to settling of accounts, the allottee is entitled to proper adjudication of his rights and liabilities. Further, Authority observes that respondent has misplaced its reliance on judgement passed by Hon'ble Supreme Court in case titled as '**Bharati Knitting Co. Vs DHL Worldwide Express Courier Division**'. As per said judgement not only the complainant but the respondents are also bound by the terms agreed between the parties. Respondent has agreed that in case the allottee is in breach of the terms then respondents are entitled to terminate the allotment, and refund the balance amounts already paid by the complainant after resale of the unit. However, the respondent too chose to not act upon termination and rather retained the amount



deposited by the complainant. Herein both parties have committed default in performing their obligations.

46. The issue remaining in the present complaint is with regard to the delay interest admissible to the complainant on account of delay caused in delivery of possession and payment of disputed charges EDC/IDC, EEDC and Electrification and STP Charges. As per observations made in para 36 of this order, possession of the plot should have been delivered to the complainant by 11.05.2010. As observed above, the complainant came to know that the respondent company had requisite documents to legally transfer the title of the plot in favour of the complainant vide letter dated 27.02.2012. Therefore, for the period from 11.05.2010 till 27.02.2012, the complainant is entitled to receive delay interest on account of delay caused in delivery of possession as per Rule 15 i.e SBI MCLR + 2% on the entire payment made prior to 27.02.2012. In respect of issue of disputed demands, it is observed that complainant has agreed to pay 'EDC and any enhancement thereof by the government shall be charged extra' in terms of booking form dated 15.02.2006. However, detailed specification of total sale consideration is only provided in builder buyer agreement which in this case has not been executed between the parties. But complainant herein is interested in seeking possession only so in absence of agreement, the respondent is entitled to recover amount from complainant on account of EDC/IDC, EEDC and Electrification and STP charges, on the same



rate as recovered from similarly placed allottees of project in question as on 27.02.2012.

47. Now with regard to the period between 27.02.2012 till the filing of present complaint on 14.09.2021. It is observed that nothing has been put on record to show as to why the complainant chose not to agitate its right before any Court of law. The respondent on the other hand raised excessive demands and failed to proactively proceed with the allotment of the complainant retained a huge amount of more than Rs 27,77,336/- till date. Both parties failed to properly pursue the allotment formalities with regard to the plot bearing no. X13-06. Accordingly, to balance the equities in the matter and in the interest of justice, Authority decides to maintain the period from 27.02.2012 till now (order dated 31.10.2023) to be treated as zero period, i.e, neither the complainant will be entitled to get delay interest for this period nor the respondents can claim holding charges or maintenance charges or interest on balance due amount. For this reason, no maintenance charges will be applicable, accordingly demands raised by the respondent on account of holding charges, maintenance charges and or interest on any delayed payments are hereby quashed. Maintenance charges shall be applicable after actual handing over of possession of plot to the complainant.

48. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:





(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

*Explanation.-For the purpose of this clause-*

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid.

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

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

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



49. 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. 31.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

50. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from due date of possession i.e. 11.05.2010 till the date of acknowledgement i.e. 27.02.2012.

51. Authority has got calculated the interest on total paid amount from due date of possession till the date of acknowledgement in respective complaints as per details mentioned in the table below:

Complaint no. 954 of 2021-It is pertinent to mention here that complainant claims to have paid an amount of Rs 27,77,336/-. Receipts are not attached for said amount. Statement of account dated 12.08.2013 has been attached in support of it and details of each payment has been disclosed at para v of complaint. Acknowledgement of all payments has been attached as Annexure C-1. Respondent in its para wise reply to para v stated that 'the contents of para v and vi under reply are a matter of record and hence needs no reply'.



Therefore, details mentioned in para v of paid amount are taken for purpose of calculation of interest.

S. No	Paid Amount	Deemed date of possession	Amount of Interest calculated till 27.02.2012
1.	27,77,336/-	11.05.2010	5,38,232/-
		Total=	5,38,232/-

Complaint no. 955 of 2021-It is pertinent to mention here that complainant claims to have paid an amount of Rs 24,15,000/-. Receipts are not attached for said amount. Statement of account dated 28.02.2012 has been attached in support of it and details of each payment has been disclosed at para v of complaint. Acknowledgement of all payments has been attached as Annexure C-1. Respondent in its para wise reply to para v stated that 'the contents of para v and vi under reply are a matter of record and hence needs no reply'. Therefore, details mentioned in para v of paid amount are taken for purpose of calculation of interest.

S. No	Paid Amount	Deemed date of possession	Amount of Interest calculated till 27.02.2012
1.	24,15,000/-	11.05.2010	4,68,014/-
		Total=	4,68,014/-



Complaint no. 956 of 2021-It is pertinent to mention here that complainant claims to have paid an amount of Rs 26,27,336/-. Receipts are not attached for said amount. Statement of account dated 21.05.2009 has been attached in support of it and details of each payment has been disclosed at para v of complaint. Acknowledgement of all payments has been attached as Annexure C-1. Respondent in its para wise reply to para v stated that 'the contents of para v and vi under reply are a matter of record and hence needs no reply'. Therefore, details mentioned in para v of paid amount are taken for purpose of calculation of interest.

S. No	Paid Amount	Deemed date of possession	Amount of Interest calculated till 27.02.2012
1.	26,27,336/-	11.05.2010	5,09,163/-
		Total=	5,09,163/-

Complaint no. 957 of 2021-It is pertinent to mention here that complainant claims to have paid an amount of Rs 27,72,120/-. Receipts are not attached for said amount. Statement of account dated 27.02.2012 has been attached in support of it and details of each payment has been disclosed at para v of complaint. Acknowledgement of all payments has been attached as Annexure C-1. Respondent in its para wise reply to para v stated that 'the contents of para v under reply is a matter of record and hence needs no reply'. Therefore, details



mentioned in para v of paid amount are taken for purpose of calculation of interest.

S. No	Paid Amount	Deemed date of possession	Amount of Interest calculated till 27.02.2012
1.	27,72,120/-	11.05.2010	5,37,222/-
		Total=	5,37,222/-

53. The complainant is seeking compensation and litigation expenses. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.



## F. DIRECTIONS OF THE AUTHORITY

54. 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 upon the Authority under Section 34(f) of the Act of 2016:

(i) Respondent shall issue an offer of possession to the complainant within a period of one month from the date of uploading of this order. Said offer of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest admissible to the complainant on account of delay caused in delivery of possession along with revised statement as per observations made in this order.

(ii) Respondent is directed to pay upfront delay interest as calculated in para 52 of this order to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order.

(ii) Complainant is directed to accept the offer of possession issued by the respondent and take physical possession within a

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period of 30 days from said date and to pay maintenance charges w.e.f said offer of possession.

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

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

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

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

  
.....  
NADIM AKHTAR  
[MEMBER]