HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2742 of 2022
Date of filing:	26.10.2022
First date of hearing:	09.02.2023
Date of decision:	13.05.2024

1. **Vijay Kumar Mendiratta**

   S/o Late Sh. Lakshmi Chand

   R/o Iris 802, Salcon Verandas,

   Golf Course Road, Sector 54,

   Gurugram, Haryana-122002

2. **Neelam Mendiratta**

   W/o Vijay Kumar Mendiratta

   R/o Iris 802, Salcon Verandas,

   Golf Course Road, Sector 54,

   Gurugram, Haryana-122002 ......COMPLAINANTS

Versus

1. **T.G. Buildwell Pvt. Ltd.**
   Registered Office: M1025A,
   The Magnolias, Tower No. 10,
   DLF Golf Links, Phase-V,

Gurugram, Haryana-122009

2. **Puneet Gupta,**
   Managing Director/HOD/CEO/Promoter,
   T.G. Buildwell Pvt. Ltd.
   Registered Office: M1025A,
   The Magnolias, Tower No. 10,
   DLF Golf Links, Phase-V,
   Gurugram, Haryana-122009

3. **Mukul Singhal**
   Director/AR
   T.G. Buildwell Pvt. Ltd.
   Registered Office: M1025A,
   The Magnolias, Tower No. 10,
   DLF Golf Links, Phase-V,
   Gurugram, Haryana-122009

4. **Pankaj Chauhan**
   Contact person at the site office
   Tivoli Holiday Village,
   Village Dharuhera
   Tehsil & District Rewari,
   Haryana

5. **Vineet Marwah**
   G.M. Customer care,
   Tivoli Holiday Village,
   Village Dharuhera
   Tehsil & District Rewari,
   Haryana ......RESPONDENTS

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Hearing: 6th

Present: - Adv. Sanya Arora, counsel for complainants through VC.

Adv. Harsh, proxy counsel for Mr. Akshat Mittal counsel of respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainants on 26.10.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name and location of the project	Tivoli Holiday Village, Sector-5, Dharuhera, Rewari (Haryana)
2.	Name of the promoter	T.G. Buildwell Pvt. Ltd.
3.	RERA registered/not registered Unit No.	Lapsed project
4.	Nature of the project	Residential Group Housing Colony
5.	Apartment No.	2B-407, Tower no. TG-III
6.	Apartment area (Super area)	120.77 Sq. mts.
7.	Date of allotment	08.10.2008
8.	Date of Apartment Buyer Agreement	08.10.2008
9.	Deemed date of possession	08.02.2011 (30 months/ 2.5 years from the date of execution of Apartment Buyer Agreement, i.e., 08.10.2008)
10.	Possession clause in Apartment Buyer Agreement	*"Clause 15 "that the possession of the said apartment is proposed to be delivered by the Company to the Allottee within 30 months (two and half years) from the date of start of construction of the particular tower in which the booking/allotment is made subject to Force Majure,*

		defined below and timely payment by the Allottee of sale price, stamp duty and other charges due and payable according to payment plan applicable to him or as demanded by the Company."
11.	Total sale consideration	₹52,00,000/-
12.	Amount paid by complainants	₹7,80,000/- (Receipt attached)
13.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

1. Case of the complainants is that complainants vide Application no. 224 dated 05.10.2008 booked a residential apartment no. 2B-407 in the project of the respondents by paying an advance booking amount of ₹7,80,000/- on 06.10.2008. Copy of the receipt/ acknowledgement dated 06.10.2008 is annexed as Annexure P/2. Subsequently, complainants were allotted an Apartment no. 2B-407 in Tower no. TG-III, admeasuring 1300 sq. ft. in the Residential Grouping Colony known as "Tivoli Holiday Village" situated at Sector-5, Dharuhera, District Rewari, Haryana via allotment letter dated 08.10.2008. After the allotment of the unit, both the parties entered into an

Apartment Buyer Agreement on 08.10.2008, i.e., the very same date of allotment. Copy of Allotment letter dated 08.10.2008 and Apartment Buyer Agreement dated 08.10.2008 are annexed as "Annexure P-2" and "Annexure P-3" respectively. Total sale consideration of the booked apartment was ₹52,00,000/-.

2. As per terms and conditions of the Apartment Buyer Agreement, respondents were under an obligation to handover the possession of the apartment within 30 months from the date of start of construction of a particular tower. However, on 03.02.2009, complainants visited the project site and noticed that no construction had begun yet and when they asked respondents for an explanation, none was forthcoming. As a result, complainants decided to cancel their booking and demanded a refund of their booking amount. Copy of letter dated 03.02.2009 is annexed as "Annexure P-4".

3. Despite, repeatedly asking for explanations for delay in construction and even a refund of the booking amount, respondents kept on raising several demand letters for the payment of the part of the consideration amount,. Copies of demand letters dated 25.03.2010, 04.12.2010, 21.12.2010, 26.12.2015 and 30.04.2017 raised by the respondents company are attached as "Annexure P-5 (colly)".

4. That it is pertinent to mention here that complainants requested the respondents to cancel their unit and to refund their paid booking amount vide letter dated 15.01.2015 along with this, complainants also replied to the demand letters raised by the respondents company vide letter dated 12.06.2015. Copy of letters dated 15.01.2015 and 12.06.2015 are annexed as "Annexure P-6 (colly)".

5. Despite receiving letters for cancellation of the unit/apartment from the complainants, respondents have neither started the construction of the unit nor initiated the process of cancellation of the unit. Aggrieved from the situation, complainants issued a legal notice for withdrawal of booking and demand of refund along with interest, damages and compensation dated 28.06.2022 to the respondents. To its utter shock, respondents refused to accept the service of the said legal notice. A copy of legal notice dated 28.06.2022 along with postal receipts and Whatsapp as well as email delivery are annexed as "Annexure P-7" and copies of latest pictures taken at the project site proving that no construction work has been started by the respondents are annexed as "Annexure P-8 (colly)".

6. As per Apartment Buyer Agreement possession was to be handed over to the complainants within 30 months from the date of start of construction of a

particular tower. However, respondents have completely failed to abide with the terms and conditions of the Apartment Buyer Agreement. Moreover, there is not even a hope of construction of the unit in the near future.

C. RELIEFS SOUGHT

7. Complainants have sought following reliefs:

   i. Direct the respondents to refund a sum of ₹7,80,000/- to the complainants in accordance with Section 12, 18, 19(4) of the Act.

   ii. Direct the respondents to remit a sum of ₹53,46,800/- as a measure of penalty and interest thereon @ 18% p.a. commencing from the date of the respective breach and loss as tabulated at Table A & B, till the date of payment in accordance with Section 12, 18, 19(4) read with Section 71, 72 of the Real Estate (Regulation and Development) Act, and;

   iii. Impose heavy penalty up to 5% of the estimated cost of Tivoli Holiday Village Project on the respondents for contravention of Section 4 of the Act, 2016 in accordance with Section 60 of the Act and;

   iv. Impose heavy penalty up to 5% of the estimated cost of "Tivoli Holiday Village Project on the respondents for contravention of

Section 19(2) of the Act, 2016 in accordance with Section 60 of the Act and;

D. REPLY ON BEHALF OF RESPONDENTS

8. Respondents have filed a detailed reply on 08.08.2023, stating therein that the said compliant is not maintainable before the Authority on several grounds:

i. Firstly, from the perusal of the reliefs sought in the complaint, it is evident that the Hon'ble Authority would not hold jurisdiction upon the complaint in question, as the complainants are praying firstly for interest @18% p.a. and not as per Rule 15 and secondly they are praying to impose heavy penalty up to 5% of the estimated cost of Tivoli Holiday Village Project on the respondents for contravention of Section 4 and Section 19(2) of the Act, 2016 in accordance with Section 60 of the Act.

ii. Secondly, the complainants herein are investors and not a bonafide consumers. The property has been purchased for the purpose of real estate investments and financial gains therefrom.

iii. Thirdly, the present complaint, in accordance with the provisions of the agreement entered into voluntarily between the parties, the dispute, if any, which could not be settled amicably, must be settled through the intervention

of a sole arbitrator. It is submitted that as per the terms of the Apartment Buyer Agreement, it was specifically agreed between the parties that-

> *"39. Arbitration: All disputes, differences arising out of, in connection with or in relation to this agreement which cannot be amicably settled, shall be finally settled through a Sole Arbitrator to be appointed by the Board of Director of the company for which the Allottee hereby gives his consent. The proceedings of Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The award of the Arbitrator shall be final and binding on the parties. The venue of arbitration shall be at New Delhi".*

That the complainants herein have breached the terms of the Apartment Buyer Agreement by approaching this Hon'ble Authority, and the Ld. Authority would not hold jurisdiction upon the instant complaint. Section 8 of the Arbitration & Conciliation Act, 1966 reads as follows: "Power to refer parties to arbitration where there is an arbitration agreement.

1. *A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*
2. *The application referred to in subsection (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.*
3. *Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."*

9. That the complainants herein are infact a defaulters, who have made immense defaults in their payments. It is important to mention that several demand letters were issued to the complainants, but all in vain as the defaulter complainants paid no heed to the same. It is only after a forfeiture notice was issued to the complainants, did they file the instant complaint to hide the defaults. The payment reminders, notices and final reminder dated 25.03.2010, 04.12.2010, 26.12.2015 and 30.04.2017 respectively in this regard are annexed as "Annexure R-1-Colly" and the 'Forfeiture Notice' dated 15.01.2019 is annexed as "Annexure R-3."

E. REJOINDER FILED BY COMPLAINANTS ON 03.10.2023

1. Complainants in their rejoinder have submitted that as far as reliefs sought by complainants are concerned, Hon'ble Authority is well within its powers to impose penalties on the respondents acting in contravention of the Act. Moreover, complainant's primary relief is refund along with interest thereon, whereof this Hon'ble Authority has exclusive jurisdiction and the rate of interest may be decided by Hon'ble Authority in the facts and circumstances of the case.

2. Further, complainants are not investors in this project but are rather a homebuyers. Even otherwise, there is no provision or regulation under the

RERA Act that the unit must have been booked for residential purpose only or that purchasing the unit for residential purpose is a pre-requisite for instituting complaints under RERA Act. As far as the question with regard to arbitration is concerned, it is a settled law that the remedies under RERA Act, are in addition to the remedies available in any other law for the time being in force. Complainants have also tried to communicate with the respondents via emails, Whatsapp, notices in order to resolve the issue but respondents did not pay any heed to those communications. Respondents have never had the intention to amicably resolve the dispute nor have they taken any steps to invoke the arbitration clause so cited in the reply.

3. Further, with regard to the forfeiture notice dated 15.01.2019, complainants deny that no such letter was ever received by them. On the other hand, it was complainants who requested for the cancellation of the unit and demanded a refund of the booking amount. But paying no attention to that cancellation letter, respondents raised several demand letters demanding payment of balance consideration on various occasions. Moreover, respondents cannot unilaterally cancel the unit booked by the complainants since they have failed to even begin with the construction at the site for over a decade.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

10. Learned counsel for complainants stated that rejoinder had already been filed in registry on 03.10.2023. Further, she stated that complainants had booked a unit under the construction linked plan and was duty bound to make payments in adherence to the payment schedule but when respondents themselves failed to begin construction of the project as per plan, then complainants were not at fault by not making any further payments. Complainants approached the respondents several times seeking information with regard to construction schedule of the project especially their unit but no satisfactory response was ever received from the respondent promoters. Left with no other option, complainants decided to ask the respondents to cancel their booked unit and asked for refund of the paid booking amount from the respondents. Even then, respondents neither paid any attention to their notice nor had developed the project or constructed the unit in question till date. Moreover, respondents are not in a position to complete the project in foreseeable future. Thus, complainants pray for a relief of refund of the amount paid by complainants along with interest.

G. ISSUE FOR ADJUDICATION

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

H. OBSERVATIONS AND DECISION OF AUTHORITY

12. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainants booked an apartment in the real estate project; "Tivoli Holiday Village" being developed by the promoter namely; "T.G. Buildwell Pvt. Ltd" and in consonance to the same, complainants were allotted Apartment no. 2B-407 in Tower no. TG-III, admeasuring 1300 sq. ft. in the residential grouping colony known as "Tivoli Holiday Village" situated at Sector-5, Dharuhera, District Rewari, Haryana via allotment letter dated 08.10.2008. The Apartment Buyer Agreement was executed between the parties on the very same date, i.e., 08.10.2008. Complainants have paid a total sum of ₹7,80,000/- against the total sale consideration of ₹52,00,000/- .

13. As per clause 15 of the agreement respondents/developers were under an obligation to hand over possession to the complainants within 30 months (2.5 years) from the date of start of construction. However, neither of the parties

has mentioned the exact date of start of construction in their files. Thus, to calculate a tentative deemed date of handing over of possession, Authority deems appropriate to ascertain 30 months from date of execution of apartment buyer agreement, i.e., 08.10.2008. Therefore, 30 months (2.5 years) comes out to be 08.02.2011. Fact remains the same that respondents have failed to construct/ develop the unit in question till date.

14. Furthermore, respondents have challenged the maintainability of the case on following grounds:

   i. *Firstly, Hon'ble Authority would not hold jurisdiction upon the complaint as the complainants are praying firstly for refund along with interest @18% p.a. and not as per Rule 15, secondly the complainants are praying for imposing heavy penalty up to 5% of the estimated cost of Tivoli Holiday Village Project on the respondents for contravention of Section 4 and Section 19(2) of the Act,2016 in accordance with Section 60 of the Act .*

With regard to above, Authority observes that firstly; complainants are praying for the relief of refund along with interest. It is pertinent to mention here that, as per Section 18 of RERA Act, if the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale, he

shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building with interest at such rate as may be prescribed and compensation in the manner as provided under the Act. Therefore, Section 18 of the RERA Act specifically empowers the Authority to mandate refunds, along with interest. Concluding the same, the said complaint is very well within the jurisdiction of the Authority for the grant of refund along with interest.

Respondents have also challenged the maintainability on the ground that complainants are praying for the relief for imposing heavy penalty up to 5% of the estimated cost of Tivoli Holiday Village Project on the respondents for contravention of Section 4 and Section 19(2) of the Act, 2016 in accordance with Section 60 of the Act . With regard to the said reliefs, complainants neither argued nor pressed upon the same during hearing. Therefore, Authority cannot adjudicate the said reliefs.

In addition to the above reliefs, from perusal of files, it is revealed by the Authority that complainants have also added two additional reliefs in their written arguments filed by complainants via application dated 19.03.2024 wherein complainants have sought 2 additional reliefs:-

a. To make a complaint to the appropriate Magistrate to take cognizance of the punishable offences committed by the respondents in accordance with the Section 80 of the act and/or;

b. Any other relief as deemed fit by this Hon'ble Authority in the facts and circumstances of the case.

With regard to the above said reliefs, Authority is of the view that complainants have not added these reliefs by some amendment application. In fact, such type of addition without prior approval of the Authority would not suffice. Therefore, these two specific reliefs are not considered and Authority will not adjudicate upon these two reliefs.

ii. *Secondly, the complainants herein are investors and not bonafide consumers. The property has been purchased for the purpose of real estate investments and financial gains therefrom.*

In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules and regulations. In the present case, complainants are aggrieved persons who have filed a complaint under section 31 of the RERA Act, 2016 against the promoters for

violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here it is important to emphasize upon the definition of the term allottee under the RERA Act 2016, reproduced below:-

> *"Section 2(d): **Allottee:** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

In view of the above mentioned definition of allottee as well as upon careful perusal of allotment letter dated 08.10.2008 and apartment buyer agreement dated 08.10.2008, it is clear that complainants are allottees as unit bearing no. 2B-407 in Tower no. TG-III, admeasuring 1300 sq. ft. in the Residential Grouping Colony known as "Tivoli Holiday Village" situated at Sector-5, Dharuhera, District Rewari, Haryana was allotted to them by the respondent promoters. The concept/ definition of investor is not provided or referred to in RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having status of an investor. Further, the definition of

"allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self consumption or for investment purpose.

The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. vs Sarvapriya Leasing (P) Ltd. and Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

Even if complainants have purchased the unit for the purpose of real estate investment and for financial gains, still the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that allottee gets a perfect title in the property, however it is a matter of fact that the title was never perfected as no conveyance deed has been executed. That this stage of delegating/ respondent's right to lease out property/unit does not arise. Thus, there is no doubt regarding the fact that complainants are only allottees not investors.

iii. *Thirdly, in accordance with the provisions of the agreement entered into voluntarily between the parties, the dispute, if any, which could not be*

settled amicably, must be settled through the intervention of a sole arbitrator. However, complainant has breached the terms of the Agreement by approaching this Hon'ble Authority, and the Ld. Authority would not hold jurisdiction upon the instant complaint.

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA 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. Also, section 88 of the RERA Act says 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 on ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, 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.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*
> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large*

> *extent, are similar to the disputes falling for resolution under the Consumer Act*
>
> .....
>
> *56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."*

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, 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. The relevant para of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting*

proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held *"there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act."* Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in

a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not required to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the Authority is of the view that the objection of the respondents stands rejected.

15. Authority observes that complainants had opted for a *CONSTRUCTION LINKED PAYMENT PLAN*. Payments were supposed to be made as and when project moves ahead. However, after booking, it was found that no construction work was carried out as per agreed plan, so complainants stopped making further payments to the respondents. Rather, complainants sent a letter dated 03.02.2009 for cancelling the booked unit and for refund of their paid amount, not only this but also complainants sent communications via emails/ whatsapp for cancellation of their unit, but even those were not

acknowledged by respondents. Since, admittedly no progress had taken place in construction of project; complainants had rightly stopped making further payments. Possession of the unit should have been delivered by the year 2011 but was not delivered or even offered till date. Further respondents failed to communicate to the complainants with regard to the status of the construction of the project. Moreover, after the lapse of 8 years from the deemed date of possession, a notice dated 15.01.2019 of forfeiture of principal amount and cancellation of allotment was issued to the complainants. Such notice cannot be sustained in the eyes of law as it is the respondents who are at fault here for failure in construction of project. Therefore, respondents cannot be allowed to forfeit any earnest money towards booking of the unit. It has been established that an inordinate delay in delivery of the possession of booked unit has been proved. Moreover, respondents are not in position to complete the project in foreseeable future. The above said situation demonstrates that the respondents were negligent in their actions. Complainants cannot be asked to wait indefinitely for possession. Therefore, complainants are entitled to refund of the amount along with interest. Thus, inordinate delay caused in the construction of the project would totally justify the prayer for refund of money paid by complainants.

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

> "25. *The unqualified right of the allottee to seek refund referred under* Section 18(1)(a) *and* Section 19(4) *of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*"

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wish to withdraw from the project of the

respondents; therefore, Authority finds it to be fit case for allowing refund in favour of complainants.

17. 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;*

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

> *"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and*

(7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

19. 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., 13.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

20. From above discussion, it is amply proved on record that the respondents have not fulfilled its obligations cast upon them under RERA Act, 2016 and the complainants are entitled for refund of their deposited amount along with interest. Accordingly, respondents will be liable to pay the interest to the complainants from the dates when amounts were paid till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainants the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2%

which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.85% from the date of payment till the date of this order, which comes to ₹21,01,387/- (₹7,80,000/- (principal amount) +₹13,21,387/- (interest accrued till 13.05.2024). According to the receipts/statement of accounts provided by the complainants, details of which are given in the table below –

Sr.no	Principal amount	Date of payments	Interest accrued till 13.05.2024
1.	₹7,80,000/-	06.10.2008 (booking receipt)	₹ 13,21,387/-
	Total=₹7,80,000/-		₹13,21,387/-
Total amount to be refunded by respondents to complainants= ₹7,80,000/- + ₹13,21,387/- =₹21,01,387/-			

I. DIRECTIONS OF THE AUTHORITY

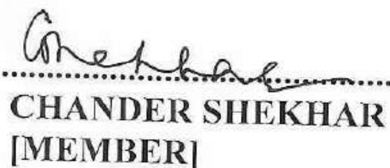
21. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the

promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondents are directed to refund the entire amount deposited by the complainants along with interest of @ 10.85 % to the complainants as specified in the table provided above in para no 20 from the dates when amounts were paid till the actual realization of the amount.

(ii) A period of 90 days is given to the respondents 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 against the respondents.

22. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.



CHANDER SHEKHAR
[MEMBER]

NADIM AKHTAR
[MEMBER]