



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1727 of 2023
Date of filing:	02.08.2023
Date of first hearing:	05.09.2023
Date of decision:	02.05.2024

Brig. S.B.Mahajan, S/o RC Gupta
R/o 104/4 Staff Quarters, Medical Mandir Marg,
JNU Campus, Jagatpura, Jaipur-302017.

....COMPLAINANT

VERSUS

1. Rise Sky Bungalows through its Managing Director
GH-02, Village Sarai Khwaja, Sector-41
Faridabad, Haryana.
2. Rise Projects Pvt. Ltd. through its Managing Director/Directors
Registered Office 195(Basement), Ram Vihar,
New Delhi- 110092

....RESPONDENTS

CORAM: **Parneet Singh Sachdev** **Chairman**
Nadim Akhtar **Member**
Dr. Geeta Rathee Singh **Member**
Chander Shekhar **Member**

Present: Adv. Tanika Goyal, Counsel for complainant through VC.
Adv. Venket Rao, Counsel for respondent through VC.

ORDER (PARNEET SINGH SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 02.08.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	"Rise Sky Bungalows", (MCF Land in Revenue Estate of Village Sarai Khawaja, Sector-41, Tehsil and District Faridabad, Haryana)
2.	RERA registered/not registered	Registered, vide no. 267/2017 dated 09.10.2017
3.	Unit (Bungalow) no.	13-PH/VS-6-GH-02, Surajkund
4.	Unit area	2050 sq. ft
5.	Welcome Letter	13.07.2013



6.	Date of builder buyer agreement	Not executed Complainant in his pleadings claims to have executed the builder buyer agreement on 14.10.2013 but no copy of signed agreement has been placed on record in support of it. Respondent in its written statement denies the execution of builder buyer agreement. (Unsigned copy attached at Annexure C-2)
7.	Due date of possession	Not available.
8.	Basic sales consideration as per ledger attached as Annexure C-3	₹1,99,44,235/- with sales tax.
9.	Amount paid by Complainant	₹1,18,70,920/-
10.	Offer of possession	Not given.

B. FACTS AS STATED IN THE COMPLAINT

3. Complainant had booked a bungalow in the project advertised by the respondent/promoter under the name and style of "Rise Sky Bungalows" situated at MCF land in Revenue Estate of Village Sarai Khawaja, Sector-41, Tehsil and District, Faridabad, Haryana by paying an initial booking amount of Rs.15,00,000/- by way of cheque no. 0064 on 04.07.2013. On the payment of the booking amount, a welcome letter for unit no. VS-6/Bungalow no. 13-PH was issued by respondent on 13.07.2013. Thereafter, floor buyer agreement was executed between the parties on 14.10.2013. Copy of allotment cum

flat buyer agreement dated 14.10.2013 is attached as Annexure C-2 (Perusal of letter dated 14.10.2013 reveals that vide said letter respondent has asked the complainant to bring documents requisite for execution of buyer's agreement and to contact on certain mobile number for execution of agreement, no copy of signed agreement has been placed on record).

4. That the customer code allotted by promoter/builder is Sky-030. Thereafter, respondent kept on demanding the payments as per construction linked plan and the complainant kept on depositing the payments aggregating to an amount of Rs 1,18,70,920/-. It would be pertinent to state that as per the agreement, time of handing over possession was within 42 months from date of buyer agreement/start of excavation whichever is later. Date of start of excavation as per allotment cum flat buyer agreement is 18.10.2013. By November, 2016 the complainant had paid total sale consideration of unit, i.e., Rs 1,18,70,920/-. Copies of payment receipts are enclosed as Annexure C-4.
5. That due to utter failure of respondent-builder and the fraudulent attitude as well the inability to hand over the flat to the complainant in promised time limit and without conveying them the expected time of delivery of his flat, the complainant was left with no option but to



avail the remedy of refund as provided by Section 18 of RERA Act,2016.

6. That the complainant without any default had been timely paying the instalments towards the property as and when demanded by the respondent and till date has paid an amount of Rs 1,18,70,920/-. The respondent illegally kept enjoying the interest on Rs 1,18,70,920/- taken from the complainant. The respondents have breached the fundamental term of the contract by inordinately not delivering the possession. Be that as it may, the project is not nearing completion and the complainant has lost faith in respondents. Respondent has also failed to refund the money or offer any alternate allotment to complainant as per terms of agreement.

C. RELIEFS SOUGHT

7. The complainant has sought following reliefs:-
 - a) Direct the respondent Rise Projects Pvt Ltd (respondent no. 2) to refund the entire amount deposited by the complainant amounting to Rs 1,18,70,920/- alongwith interest @24% p.a. amounting to total Rs 3,76,84,391/- as on 31 July,2023 in light of the exorbitant delay in handing over possession of the purchased flat as against the contractual stipulation date alongwith Rs One crore as damages for the



severe harassment caused to the complainant in the peculiar facts and circumstances and Rs Five lakhs as the legal costs.

- b) Pass such order and further order as this Hon'ble Authority may deem fit and proper in present complaint.
- c) Any other relief which this Hon'ble Authority deems fit in view of the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 2.

Learned counsel for the respondent filed a detailed reply on 05.12.2023 pleading therein:

- 8. That, complainant vide application cum registration form dated 03.07.2013 requested the respondent to allot a residential unit in its project, i.e, Rise Skybungalows at GH-02, Sector-41, Surajkund, Faridabad, Haryana. Copy of application cum registration form is attached as Annexure R-2. In consideration of same, respondent allotted unit bearing no. VS-6, Bungalow no. 13 PH, admeasuring 2050 sq ft at a basic sale price of Rs 1,89,80,425/- . Total cost of the property as per application form is Rs 1,99,44,225/- + Sales Tax as applicable.
- 9. That it is penitent to bring into the kind attention of Ld. Authority that the respondent post allotment of the unit to the complainant, requested and reminded the complainant from time to time to come forward to



execute the 'Allotment-cum-Flat Buyer agreement'. Respondent had sent letter dated 25.09.2013 and 14.10.2013 to the complainant requesting him to visit the corporate office along with necessary documentation for execution of the allotment letter cum apartment buyer agreement. Representatives of the respondent further reached out to the complainant via telephonic conversation and requested to execute the allotment-cum-Flat Buyer agreement. However, all the requests fell on deaf ears and the complainant failed to execute the allotment-cum-Flat Buyer agreement till date with the respondent. Respondent has requested the complainant multiple times to execute the buyer agreement and complainant failed to do so, thus the respondent cannot be held to be in violation of any of the provisions of the RERA Act,2016 including of Section 13 thereof.

10. That as per clause 26 of Application cum registration form, the date for handing over of possession was 42 months from the date of start of excavation or execution of flat buyer agreement whichever is later. Further, 180 days grace period after the expiry of the period of 42 months is to be granted. It is to be noted that since the later date of either start of excavation or execution of flat buyer agreement is to be considered to determine the due date of possession and since the flat buyer agreement has not been executed by the complainant till date, therefore the due date of possession has not yet arisen.



11. That the overall developmental works with respect to construction of the Towers including all internal developments thereof, all landscaping of the project, other facilities and amenities like basket ball courts, play areas etc. common area have been completed in all aspects. Photographs of the project is attached for reference as Annexure R-4.
12. That the project of the respondent is at the final stage and ready for handing over for fit outs and is delayed because of 'force majeure' situation occasioned on account of non-action on the part of "Municipal Corporation of Faridabad". It is pertinent to mention that the Respondent has time and again approached to the 'Municipal Corporation, Faridabad (MCF)' for resolution of 'force majeure' situation but despite assurances, the 'MCF' authority has taken no action to resolve the existing situation.
13. That left with no option but to accept the dominant and one sided allotment letter by MCF, the respondent complied with the terms of the allotment letter by getting approvals/licenses/sanctions on time and thereby commencing the work at site. However, the MCF did not commence any development work/services at the project site as was promised to the respondent. The respondent started to face severe hardships in developing the project due to lack of development work,



which the respondent was supposed to provide within nine years of the date of allotment letter.

14. That the respondent has regularly followed up with the 'MCF' and has requested them to complete the development work in entirety, so that the project can be completed and the possession of the apartments/ units can be handed over to the allottees.
15. The respondent humbly submits that due to increasing levels of air pollution in the Delhi NCR region, the National Green Tribunal (NGT) vide its various orders and notifications had completely banned any form of construction activity for varying periods each year since 2015. In addition to it, movement of diesel vehicles including trucks carrying construction materials like cement, sand, grit etc. was also banned thereby disrupting the supply chain of the raw material required for the construction of the project.
16. That it is pertinent to mention herein that ban on construction activities even for a few days completely derails the construction pace. Even though the ban is only for a few days or weeks or couple of months, as the case may be, it takes double the time to mobilise the labour and material and recommence the construction activities.
17. A detailed chart showing the days of construction ban since 2015 to 2021, and its effect on time taken to mobilise the labour and resources and restart the construction activity.

S.No	Year	Order on construction ban	Order on construction restart	Days	No. of days to mobilise the resources and restart work
1	2016	08.11.2016	15.11.2016	8	30
2	2017	08.11.2017	17.11.2017	10	35
3	2018	31.10.2018	26.12.2018	56	76
4	2019	25.10.2019	14.02.2020	114	140
5	2021	15.11.2021	20.12.2021	36	30
TOTAL				224	310

It is evidently clear from the above chart that the respondent was unable to carry on any construction activities for almost a year. The respondent for no fault on its part had to stop the construction work resulting into a force majeure situation beyond the control of the developer/ respondent for which he is entitled to corresponding extension of time for the completion of project.

18. That the construction activities have been severely hit by Covid -19 pandemic. Above all the reverse migration of the labourers added to the vows of the real estate sector and severely affected construction and development of the ongoing projects. That this Hon'ble Authority vide its office orders dated 26.05.2020 and 02.08.2021 declared the period from 25.03.2020 till 24.09.2020, and from 01.04.2021 till 30.06.2021 as force majeure period.

19. That the respondent most humbly submits that the delay has occurred due to delay caused by MCF, time to time construction ban by Hon'ble

Supreme Court and Pollution Control Authorities, National Green Tribunal (NGT), and COVID-pandemic. The respondent despite its best efforts and endeavours could not overcome the force majeure conditions as stated above. It is submitted without admitting that, granting refund with interest without taking into consideration the "force majeure" situation, due to MCF, Ban on construction and COVID -19 would cause miscarriage of justice to the respondent.

20. That complainant had categorically agreed while executing the application cum registration form that if he seeks cancellation of the unit then as per terms of the application cum registration form, the respondent will be constrained to deduct earnest money alongwith disbursed commissioner to the real estate agent/channe partner. This has been clearly stated in clause 8 of the application cum registration form. Further, in clause 12 of application cum registration form, the complainant agreed and consented that, 'Earnest money' shall mean 10% of the total cost of the property, including booking amount paid by the complainant. It was also specifically agreed that the respondent shall be entitled to cancel the allotment and forfeit the earnest money paid by the complainant alongwith the non-refundable amounts in case of withdrawal from the project and also in the event of failure of the complainant to sign and return to the respondent the allotment cum flat buyer agreement.

21. That the non-refundable amounts are the various taxes and cess such as the Services Tax, Collection Service Tax, Swachh Bharat Cess, Krishi Kalyan Cess etc. which have already been passed through to the Government authorities and have not been received by the respondent. These amounts being pass-through charges, no benefit has been received by the respondent. Also, the respondent at this stage cannot claim any input credit on these charges from the Government authorities. Therefore, without any prejudice or admitting anything, if any refunds granted then an amount of Rs 5,48,626/- is liable to be deducted from the amount received from the complainant.

22. That it was specifically agreed in the application form that the timely payment shall be the essence of the transaction and allotment. However, the complainants regularly defaulted in payment of installments.

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

23. During oral arguments, Id. counsel for the complainant submitted that in the present matter, booking was done in the year 2013. Complainant made payments as and when demanded by respondent no. 2 but respondent no. 2 failed to complete the unit within stipulated time. Therefore, complainant stopped making the payment towards the unit. Further, nothing has been mentioned in the reply about the current

status of the project pertaining to occupation certificate. She submitted that complainant by virtue of Section 18 of the RERA Act, 2016 is pressing for refund of the amount paid by him from respondent no. 2.

24. Ld. counsel for the respondent no. 2 reiterated the averments made in the reply and further stated that refund at this stage when the project is almost complete is not viable as it will jeopardise the entire project. Further, he argued that there is no fault of respondent in not receiving the occupation certificate as same is pending due to fault of MCF.

F. ISSUES FOR ADJUDICATION

25. (i) Whether the Complainant is entitled to refund of the amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. 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:.

26. Complainant in present complaint has impleaded two respondents; first is Rise Skybungalows and second is builder-company Rise Projects Pvt Ltd. Relief has only been sought qua respondent no. 2 as specified in relief clause of complaint. Further, at the time of hearing, Id. counsel for complainant was asked as to whether any other relief in

particular has been sought against respondent no. 1 or not? In reply to it, ld. counsel for complainant stated that relief of refund has been sought against only respondent no. 2 and no relief in particular has been against respondent no. 1. Considering said statement and fact that all transactions/communications have been made only with respondent no. 2, so no direction is passed against respondent no. 1 in this final order.

27. Before proceeding further on merits, it needs to be examined whether respondent no. 2 (Rise Projects Pvt Ltd) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, definition of "promoter" under section 2(zk) needs to be perused. Definition 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

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Plain reading of the definition given under section 2(zk) makes it clear that any person who develops land into a project and constructs apartments/floors/structures for selling it to public is a promoter in respect of allottees of those structures. Here, respondent is a developer who is constructing and selling the apartments to public. In furtherance of said process accepted the registration application from complainant on 02.07.2013 and issued welcome letter dated 13.07.2013 for unit no. VS-6/Bungalow no 13 PH, of an area measuring 2050 sq ft in its project-^s 'Rise Skybungalows' a group housing project on GH-02, MCF land in revenue

estate of Village Sarai Khawaja, Sector-41, Faridabad. Hence, respondent-Rise is duly covered under the definition of promoter under section 2(zk).

28. In the present matter complainant was allotted VS-6/Bungalow no 13 PH, of an area measuring 2050 sq ft in the respondent's project mentioned in above paragraph, therefore falls within the ambit of definition of allottee. Further, the unit was allotted by the respondent to the complainant-allottee for the basic sale consideration of Rs 1,46,47,250/-, and 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:

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 respondent-Rise is a promoter in respect of allottees of units sold by it in its real estate project- Rise Skybungalows and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondent 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. Thus, the issues involved in complaint and relief sought

are well within the ambit of the Authority. Further, Section 79 of RERA Act, 2016 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.

29. On merits, it is not disputed by any of the parties that the complainant had booked a bungalow in respondent's project named, 'Rise Sky Bungalows' at MCF Land, Sector- 41, Faridabad by paying an initial booking amount of Rs.15,00,000/- by way of cheque no. 778510 on 04.07.2013 to the respondent-promoter. On payment of the booking amount "welcome letter" for unit no. VS-6/Bungalow no 13 PH was issued by respondent on 13.07.2013. As per version of complainant, builder buyer agreement was executed between the parties on 14.10.2013 and in support, its copy is annexed as Annexure C-2. On the other hand, respondent denies the execution of builder buyer agreement stating that complainant did not come forward for execution of agreement even after issuance of reminders dated 25.09.2013 and 14.10.2013. It is the stand of respondent that representatives of respondent reached out to complainant via telephonic calls and requested to execute builder buyer agreement but complainant did not choose to come forward for signing the builder buyer agreement. Perusal of file reveals that document dated 14.10.2013 annexed as Annexure C-2 which is referred as builder buyer agreement by complainant is a letter with



subject-'Execution of "Allotment-cum-Flat buyer" Agreement and demand due on excavation'. Content of said letter is reproduced below for reference:-

'We wish to inform you, as you have deposited 20% of BSP (Basic Sale Price) with us, for above referred Bungalow No. 13PH/VS-6, hence you have now become eligible for execution of the "Allotment-cum-Flat Buyer" Agreement in your favour. "Kindly visit our Corporate Office - 409, 4th Floor, Elegance Tower, Jasola, New Delhi - 110025" alongwith your I Card, Address Proof (Passport, Voter Id) and PAN Card (all Original) & 2 Photographs of the applicants in order to start the process for the same. (Please ignore if already signed).

We are happy to inform you that we have got maps sanctioned from MCF (Municipal Corporation of Faridabad) and we are starting the excavation by 18th Oct 2013. For execution of the "Flat Buyer Agreement" kindly contact on mob. nos. 08447756665 & 08130590861 before coming.

NOTE: Deposit of 20% of BSP (Basic Sale Price) is pre-requisite for execution of the "Allotment-cum-Flat Buyer" Agreement. Please ensure the payment of said amount at your earliest, if not paid so far.'

Except said letter no other document has been attached by complainant in support of claim that builder buyer agreement has been executed between the parties on 14.10.2013. Respondent clearly denies execution of any builder buyer agreement with complainant. In these circumstances, it can be adduced that no builder buyer agreement was executed between the parties. In the absence of execution of a buyer agreement or any other specific clause in welcome letter, 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) & Ann. 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 welcome letter, i.e, 13.07.2013, possession of the allotted unit should have been delivered to the complainant on 13.07.2016. Therefore, the deemed date of delivery of possession works out to 13.07.2016. Factual position remains that respondent has not offered possession of allotted unit till date. Meaning thereby that respondent failed in its obligation to deliver possession to the complainant within stipulated time.

30. Complainant has alleged that he has fulfilled his part of the contract by paying all amounts as and when demanded by the respondent and have so far, paid an amount of Rs. 1,18,70,920/-. Though, the respondent promoter had not disputed the amount paid by the complainant, it has rebutted the claim of the complainant that he has made all the payments. It is the stand of the respondent that it is the complainant who has defaulted in making timely payments, and there remains outstanding dues against the complainant. To adjudicate this issue, the Authority has perused the customer ledger alongwith payments schedule and receipt information attached at page no. 124 and 125 of written statement respectively. Said document reveals that complainant had paid 11 instalments amounting to Rs 1,18,70,920 (inclusive of taxes) out of total 12 instalments, last instalment amounting to Rs 5,43,717/- as per payment plan opted by complainant. 11th instalment of Rs



4,61,074/- was to be paid on "start of plaster work" which was paid on 12.11.2016. 12th instalment amounting to Rs 5,43,717/- was to be paid at stage of 'on possession'. Fact remains that offer of possession has not been made by respondent till date so no amount stands due towards said instalment. For the 12th instalment, there is no demand letter being referred by respondent to prove that complainant defaulted in honouring said demand letter. It implies that post the payment of 11th instalment there is nothing on record placed by the respondent to show that any further due demands were raised by the respondent and the complainant defaulted in paying the same. Hence, for the payments which were never demanded or become due, the complainant cannot be said or presumed to be at default. Thus, the contention of the respondent promoter that there is delay/default in payment on part of the complainant and therefore, he cannot seek relief of refund is not tenable.

31. Further, respondent has stated that delay in completion of project has been caused due to reasons beyond control of the respondent. The reasons for delay as pleaded by the respondent promoter are:-

a) Default by the Municipal Corporation:

Respondent has averred that the project is at final stage and ready for handing over for fit outs but it is delayed because of non-action on the part 'Municipal Corporation Faridabad', i.e., development works have not been carried out by MCF. In this regard, Authority observes that



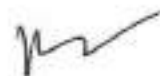
present dispute/complaint is inter se between the allottee-complainant and promoter-respondent for violation of contractual obligations in terms of welcome letter/application cum registration form. Both parties were obligated to honor/ fulfill terms of said welcome letter/application cum registration form. Complainant has fulfilled his part by making 95% payment of total sale consideration as demanded by the respondent. However, the respondent failed to fulfill its obligations by delivering possession of apartment within stipulated time, i.e., 13.07.2016. On account of said failure on part of respondent, the allottee is within his rights to invoke the provision of Section 18 of RERA Act,2016 which provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with terms of agreement then promoter shall be liable on demand to return the amount received by him in respect of that apartment, plot or building with interest as such rate as may be prescribed. Further, on perusal of welcome letter/application cum registration form, it is evident that the construction of the apartment was the obligation of the respondent, amount for said purpose was received by respondent not by MCF. Even if any dispute between the MCF and promoter has arisen, then allottee is not being affected for the reason that allottee has not entered into an agreement with the MCF. As per the welcome letter/application cum registration form, the respondent was under an obligation to construct the unit. In the



present case, the question involved is completion and handing over of the apartments which is the sole obligation of the respondent. Here construction of the unit has not been completed itself by respondent as is evident from customer ledger and statement of account issued by respondent. Demand upto 12th installment pertaining to offer of possession has not been raised by respondent as no offer of possession is being issued by respondent to complainant till date. Respondent has not carried out the construction of the unit to its complete finishing extent without any detailed justification for it. Casting liability upon MCF for non-completion of project at this stage is not appropriable. Hence the plea of the respondent promoter, i.e., the project got delayed due to fault by MCF is rejected.

b) Ban imposed by the NGT on construction activities:

Respondent has stated that the project got delayed due to ban imposed by NGT on any form of construction activities. On perusal of table reproduced in paragraph 17 of this order, it can be seen that the no ban was imposed by NGT on or before the deemed date of possession, i.e., 13.07.2016. So, any event/activity/stay order which came into effect post the deemed date of possession cannot be taken into consideration for delaying the construction activities at site of project. Hence, the plea of the respondent that the project got delayed due to bans imposed by NGT is rejected.



c) COVID- 19 Pandemic:

Respondent has raised a plea that construction activities got severely hampered by pandemic Covid-19 due to reverse migration of the labourers. As a matter of fact, Covid-19 pandemic had resulted into nation wide lockdowns w.e.f. March, 2020. In this case, the deemed date of possession was 13.07.2016, which was way before the outbreak of COVID-19 pandemic. Any circumstances or conditions which took place after expiry of period of deemed date of possession cannot be counted towards delay in project, therefore the respondent cannot take the plea that delay in handing over the possession is caused due to COVID- 19. As far as delay in construction, due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

"69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since septemeber,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which



came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself."

So, the pleas of respondent to consider force majeure conditions discussed above towards delay caused in delivery of possession is without any basis and the same are rejected.

32. Respondent had filed an application on 05.12.2023 seeking impleadment of MCF as necessary party, i.e., respondent no. 2 to complaint for effective adjudication of complaint on the ground that this Authority vide its order dated 24.11.2022 passed in *Complaint no. 430 of 2020 titled as Rise Projects Pvt. Ltd. v. Municipal corporation Faridabad* categorically held that MCF is a co-promoter with respect to the individual allottees of the respondent. In this regard, Authority observes that agreement for sale, i.e., allotment letter cum agreement was entered into between the allottees and respondent wherein respondent itself specified time period for handing over possession of the unit. Said obligation pertaining to construction of the unit and handing over of possession was only upon the respondent, MCF was never involved towards the phase of construction of the unit/apartment. It is only for the developments works/amenities such as roads, sewage disposal line, water supply, storm water drainage etc. the MCF was under obligation



to complete them. Authority in its order dated 24.11.2022 passed in complaint no. 430 of 2020 has stated that the development works in the project can only be undertaken by MCF when Rise developers-respondent completes the construction of the project. In case of failure on part of respondent-promoter to deliver possession, Section 18 of the RERA Act, 2016 comes into picture wherein it is stated that, *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 or, as the case may be, duly completed by the date specified therein then respondent shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.* Looking to facts of this case in light of aforesaid section, it is apparent that respondent-Rise Projects Pvt Ltd failed to complete the construction of the unit which was a specific obligation cast upon it in terms of welcome letter/application cum registration form meaning thereby that respondent has failed to give possession of unit to complainant in terms of welcome letter/application cum registration and therefore, respondent is under an obligation to return the paid amount with interest. The role of MCF vis-à-vis the construction part of the unit is not at all established, as obligation to undertake/carry out the construction of the unit was always



entrusted upon the respondent and not the MCF. Scope of MCF was limited only for the purpose of developments works of the project which were to be carried out after completion of construction, which in this case has not got completed to the extent of offer of possession as 12th installment pertaining to stage of possession was never raised by respondent. MCF has nothing to do with the obligations cast upon respondent in terms of welcome letter/application cum registration specifically pertaining to construction and delivery of possession of unit/apartment. Respondent under the garb of external development works cannot be allowed to shirk the responsibilities cast upon it. Moreover, stage of external development works has not yet been arrived in this particular case as construction of the unit is still lying incomplete which is evident from the fact that 12th installment pertaining to stage of 'offer of possession' has not been raised till date. Accordingly, Authority decides that MCF was never entrusted upon the construction work of the unit as it was specific obligation upon respondent only, thus Authority is of the considered view that MCF is not a necessary party to the complaint and therefore, the application for impleadment of MCF as respondent no. 2 stands rejected.

33. With regard to submission of respondent that even if relief of refund of paid amount is to be awarded to the complainant then same may be awarded subject to forfeiture of earnest money and after deduction of non-refundable amount of Rs 5,48,626/-, the Authority observes that respondent is in receipt



of total sale consideration of unit which is Rs 1,18,70,920/- since 12.11.2016. Thereafter no further amount remains due on part of complainant till date for the reason that respondent has not raised any demand thereof towards sale consideration of unit. Clause 8 and 12 of application form dated 02.07.2013 is referred by the respondent which describes the various circumstances/grounds in which respondent is authorised to forfeit the earnest money. Relevant clauses, i.e., Clause 8 and clause 12 reads as under:-

"8. In case of cancellation of the apartment, company/developers will be deducting disbursed commission amount against said unit over and above earnest money.

12. "Earnest Money" shall mean 10% of the Total Cost of Property, including the booking amount paid by the Applicant(s). The Applicant(s) agrees that the Company shall be entitled to cancel the allotment and forfeit the Earnest Money paid by the Applicant(s), along with the Non Refundable Amounts in case of non fulfillment/ breach of the terms and conditions of the Application and the Agreement including withdrawal of the Application and also in the event of the failure by the Applicant(s) to sign and return to the Company the Agreement within thirty (30) days from the date of its dispatch by the Company. Thereafter the Applicant(s) shall be left with no lien, right, title, interest or any claim of whatsoever nature in the Said apartment/Parking spaces. It is understood by the Applicant(s) that the Company is not required to sent reminders/notices to the Applicant(s) in respect of the obligations of the Applicant(s) as set out in this Application and/or Agreement and the Applicant(s) is required to comply with all its obligations on its own. The Company shall thereafter be free to resell and/or deal with the Said Apartment/Parking Spaces in any manner whatsoever."

34. In light of aforesaid clauses, the respondent can proceed for forfeiture of earnest money in two circumstances, first; when the cancellation of the



apartment takes place and second; when the allottee defaults in not sending the signed copy of builder buyer agreement to respondent within 30 days of receipt of same. Factual position remains that complainants have duly abided by the terms and conditions of application form by making full and final payment of total sale consideration upto 12.11.2016 and after said payment no amount remains due on his part. Obligation was left upon respondent to complete the construction and to deliver a valid possession within stipulated time. It is not the case that respondent after year 2016 had issued demand letters which were not honoured by complainant. No document proving non-fulfilment of terms and conditions of application form has been placed on record by respondent. Herein it is not a simple case of cancellation, complainant in this case has duly invested his amount till year 2016 and sincerely waited for possession of allotted unit till filing of complaint in the year 2023 but it is the respondent who defaulted in fulfilling its obligations in delivering possession. Now when there is no hope left with complainant to deliver a valid possession by respondent then complainant has approached this authority seeking refund of paid amount. So it is not the case of cancellation as mentioned in clause 8 of application form. Rather complainant has duly abided by the payment plan towards the allotted unit in hope of getting valid possession but fact remains that valid offer of possession cannot be made/issued even today by respondent as occupation certificate has not yet been received by respondent from the competent authority. Had it been



the case where the valid possession duly supported with occupation certificate has been offered to complainant-allottee but allottee still wants to cancel the allotment of unit and prays for refund, then plea of respondent to deduct the earnest money could have gained strength as respondent therein duly fulfilled its obligations pertaining to possession of unit. Further in respect of second circumstance, as per version of complainant he had sent a signed copy of builder buyer agreement to respondent but it is the respondent who has not returned the signed copy of builder buyer agreement to him. Respondent has denied the execution of builder buyer agreement with complainant stating that complainant never came forward to execute the builder buyer agreement even after issuance of reminders and several telephonic communications. Herein, stand of respondent is that complainant is at default for not signing the agreement. But no letter of cancellation/forfeiture of earnest money was issued by respondent in response to said default of complainant. Moreover, in case of default the respondent was having an opportunity to withdraw the welcome letter dated 13.07.2013 which has not been done so in this case till date. Infact respondent itself acted contrary to terms of application form by accepting payments regularly by complainant till year 2016. No document for proving any kind of default on part of complainant has been placed on record by respondent. Respondent remained silent for years and choose not to act upon default of complainant in consonance with clause 8 and 12 of application



form. Now after almost 11 years respondent cannot be allowed to proceed further with forfeiture of earnest money due to non-signing of agreement by complainant. Accordingly, the plea of respondent to refund the paid amount after forfeiture of earnest money is devoid of merit and is therefore rejected.

35. Regarding non refundable amount of Rs 5,48,626/- paid on account of taxes and various cess to government authorities, it is observed by the authority that whenever any product is sold out which in this case is property/flat its transaction/sale consideration is always subject to payment of statutory taxes. Taxes/Cess paid by respondent remains recoverable from the third-party whenever the unit in question gets sold by respondent to any third party. It is not the case that respondent bears burden of taxes and cess of each unit rather it is being borne out by the purchaser. Fact remains that amount once deposited to government cannot be sought as refund but respondent-builder pays it on behalf of purchaser-allottee and then allottee pays it to the builder. So, plea of respondent to deduct an amount of Rs 5,48,626/- does not hold any merit and is therefore rejected.

36. Today is the 4th hearing in the matter and factual position of the case is that respondent failed to honor its obligations to deliver possession of booked unit as per the stipulated time, i.e., by 13.07.2016, without any valid/reasonable justification. Respondent is in receipt of total paid amount of Rs 1,18,70,920/- since 12.11.2016 but the unit is not yet ready for handing

over of possession and there is no hope of its completion alongwith receipt of occupation certificate even in near future. In light of these facts, complainant has prayed for relief of refund of the amount paid by him along with prescribed rate of interest from the date of respective payments for inordinate delay in completion of project.

37. With respect to the rights of the allottee to seek refund from the Authority, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per 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.

38. Keeping in view the aforesaid observations, Authority cannot force the complainant to endlessly wait for respondent to complete the project and deliver possession. Complainant is well within their rights to seek refund of the money paid by him by the virtue of Section 18 of the RERA Act, 2016. Thus, the Authority considers it a fit case for grant of refund along with interest at the prescribed rate. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted.

39. 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;

40. 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. 02.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.

41. Complainant has claimed in his complaint interest @ 24%. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

42. 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".

43. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 1,18,70,920/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on

date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of this order and said amount of interest works out to Rs 1,26,32,968/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.05.2024
1.	15,00,000	04.07.2013	17,63,942
2.	20,19,720	04.09.2013	23,37,890
3.	12,59,860	10.11.2013	14,33,236
4.	5,00,000	10.11.2013	5,68,808
5.	5,00,000	02.06.2014	5,38,487
6.	17,69,944	02.06.2014	19,06,184
7.	58,000	05.10.2014	60,309
8.	5,000	22.11.2014	5128
9.	17,000	12.12.2014	17,333
10.	8,17,000	21.02.2015	8,15,772
11.	10,00,000	27.04.2015	9,79,175
12.	80,000	01.05.2015	78,239
13.	10,00,000	04.09.2015	9,40,532
14.	1,00,000	10.09.2015	93,875
15.	3,23,000	22.09.2015	3,02,063
16.	3,00,000	21.12.2015	2,72,528
17.	60,322	21.12.2015	54,798
18.	1,00,000	28.12.2015	90,635
19.	4,61,074	12.11.2016	3,74,034
20.	Total=1,18,70,920/-		Total= 1,26,32,968 /-
21.	Total Payable to complainant	1,18,70,920+ 1,26,32,968=	2,45,03,888 /-

44. The complainant is seeking compensation on account of harassment and legal cost. 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 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 compensation and litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent is directed to refund the entire amount of Rs 1,18,70,920/- alongwith interest of Rs 1,26,32,968/- to complainant. It is further clarified that respondent will remain



liable to pay the interest to the complainant till the actual realization of the above said amounts.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would be followed.

46. Hence the present complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


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


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]