



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2781 of 2022
Date of filing.:	19.10.2022
First date of hearing.:	21.12.2022
Date of decision.:	27.05.2024

Najma Banu D/o Mr. Abdul Hafiz Khan
R/o A-304, Mansara Apartment,
Vasundhara Enclave,
New Delhi-110096

....COMPLAINANT

VERSUS

M/s BPTP Limited through its Director
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

...RESPONDENT

CORAM:

Nadim Akhtar

Member

Chander Shekhar

Member

Present: -

Mr. Ankur Das, Proxy Counsel for Janya Sirohi, Arguing
Counsel for the Complainant through VC.
Mr. Hemant Saini, Counsel for the respondent.

ORDER (NADIM AKHTAR- MEMBER)

Complaint no. 2781 of 2022

1. Present complaint has been filed by the complainant on 19.10.2022 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 project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	"Park Elite Floors", Sector 77, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	PE-302-FF (First Floor), admeasuring 1371 sq. ft.



6.	Date of floor buyer agreement	05.03.2012
7.	Due date of possession 24 months	05.03.2014
8.	Possession clause in BBA (Clause 5.1)	<p><i>"Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The</i></p>



		<i>Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s)".</i>
9.	Basic sale consideration	₹ 26,44,399/-
10.	Amount paid by complainant	₹ 23,99,841/- exclusive of timely payment discount.
11.	Offer of possession.	Not given till date.

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the respondent had approached the complainant in the year 2008 and had extensively advertised about its project namely; "Park Elite Floors" through various media channels and had inter alia promised the timely completion of construction and handing over of possession. Respondent had given the enticed to the complainant with lucrative offers and accordingly complainant had participated in a draw of lots conducted by the respondent in December, 2009. However,

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the complainant remained unsuccessful on the first attempt and willingly waited for another chance for allotment of an independent residential floor in respondent's project namely; "Park Elite Floors" Sector-77, Faridabad.

4. That the respondent held another draw of lots in September 2011, by virtue of which one Mr. Sunil Kumar Shah was successful and he had accordingly been allotted an independent residential floor in the said Project. It is submitted that in the same year the said allotment was transferred by Mr. Sunil Kumar Shah in the name of the complainant. In view of the above, complainant purchased the said floor bearing number 'PE-302-FF' in the project of respondent.
5. That in consonance of the same, Builder Buyer Agreement (BBA) was executed between the complainant and the respondent on 05.03.2012, wherein, the consideration for the unit was fixed at Rs. 1,859.52/- per square feet for an area of 1,203 square feet and an amount of Rs. 2425/- per square feet, for an area of 168 square feet, which was payable by the complainant to the respondent as per the payment schedule which was annexed with the said Agreement as Annexure-'C'. Thus, a total consideration of Rs. 26,44,399/- was payable by the complainant to the respondent. The copy of the BBA dated 05.03.2012 is annexed as Annexure A-2.



6. That as per Clause 5.1 of the said Agreement, the possession of the unit was to be handed over by the respondent to the complainant within a period of 24 months, plus 180 days (6 months) grace period, from the date of execution of the said Agreement i.e., latest by 05.09.2014. However, the respondent miserably failed to hand over the possession within the stipulated time and even now have no scope of being able to hand over the possession. Further, respondent did not ever communicate the status of the project to the complainant.
7. That despite not honoring the obligations, in addition to not adhering to the timelines, stipulated under the Agreement, respondent has been constantly and consistently demanding payments with respect to the installments towards the sale consideration of the Unit, without ever giving proper intimation to the complainant about the status of the completion of the project. It is pertinent to mention herein that the complainant has never defaulted in making the payments towards the installments and has been diligently paying for almost the last 10 years, in the hopes of getting the possession of the Unit, i.e., since the inception of the first draw of lots towards the property. Accordingly, complainant has paid an amount of Rs.23,99,841/- towards the total sale consideration of the Unit, which amounts to almost 95% of the total sale consideration amount. Copies of the receipts are annexed as Annexure-A-3.



8. That the Complainant has been repeatedly and diligently asking the Respondent for details and status of the project over a period of more than 7 years but respondent never reverted to queries raised by complainant. Further, it is stated that respondent vide an email dated 31.10.2020 issued a termination letter with respect to the buyer Agreement with utter and complete malice, without providing any proper justifications. The said email had merely mentioned that the complainant had failed to pay one installment and therefore the respondent was terminating the agreement from their end, without disclosing any details of the fact of the matter. The true copy of the email dated 31.10.2020 issued by the Respondent to the complainant is annexed as Annexure-A-4.
9. That the complainant immediately replied to the above-mentioned arbitrary letter dated 31.10.2020, vide an email dated 05.11.2020 and accordingly, the complainant terminated the agreement, by giving detailed reasons and justification thereto and demanded for the refund of the entire sale consideration paid by the complainant till date. It is also stated that vide email dated 05.11.2020, the complainant had even given an option for settling the matter amicably and thereby even suggested a meeting and discussing the said possibilities with the respondent so as to get the refund of the entire money paid by the complainant herein



amicably and asked the Respondent to provide the Statement of Accounts for her unit and the payments made by her till date. The true copy of the email dated 05.11.2020 issued by the complainant to the Respondent is annexed as Annexure-A-5.

10. That vide email dated 07.11.2020, respondent sent an evasive reply communicating that the respondent would like a detailed discussion on the concerns raised by the complainant. However, the respondent failed to provide any number and/or details of the concerned personnel and merely mentioned the customer care number. Complainant had tried to get number numerous times and also tried to get in touch with someone from the respondent's office to discuss the possibility of settlement of matter, but the entire exercise was in futile as the respondent never responded. In fact, the respondent did not only not responded to the complainant but also failed to refund the entire money deposited by complainant and/or initiate such possibilities from its end. The true copy of the email dated 07.11.2020 issued by the respondent to the complainant is annexed as Annexure-A-6.
11. That the complainant came to know that the respondent has not even obtained the Occupancy Certificate from the competent Authority/department as of now and even the completion of the project seems hopeless even after expiry of period of more than 6 years.



Complainant has been regularly and diligently following up with the respondent for the updates as to the completion of the project in addition to asking about the possession of the same since the last 7 years but the respondent has never responded properly. In fact, the respondent has cheated the complainant out of her hard-earned money, with the intention of making illegal gains at the cost of the Complainant.

12. That in view of the fraudulent behaviour of the respondent, the complainant was constrained to issue a Legal Notice through her Counsel dated 23.02.2021, demanding refund of the entire paid amount from the Respondent till date along with an interest of 18% per annum, in addition to this a sum of Rs. 10,00,000/- (Ten lacs) towards harassment, agony and economic abuse caused by the respondent over a period of 8 years, from the date of execution of the Agreement. The copy of the Legal Notice dated 23.02.2021 is annexed as Annexure-12. Said legal notice was sent to the respondent by speed post on 24.02.2021 and the same was duly delivered to the respondent on 25.02.2021. However, despite the receipt of the legal notice, respondent failed to refund the entire amount to the complainant. The true copy of the postal receipt and the delivery report are annexed as Annexure-13.
13. In the light of the afore-said facts and circumstances, the complainant wishes to exercise the remedy provided to her under section 18(1) of the

Complaint no. 2781 of 2022
Real Estate (Regulation and Development) Act, 2016 and withdraw from
the project and the respondent is liable to refund the entire amount paid
by the complainant till date along with interest to the complainant.

C. RELIEFS SOUGHT

14. That the complainant seeks following reliefs and directions to the respondent:-
- i. Direct the respondent to refund the entire amount of money paid by the complainant to the respondent till date amounting to Rs 23,99,841/- alongwith interest at the rate prescribed under the Real Estate (Regulation and Development) Act,2016 and the regulations framed thereunder in terms of sub-section (1) of Section 18 of the Real Estate (Regulation and Development) Act,2016 from the date the money was paid by the complainant to the respondent till the date of actual refund.
 - ii. Any other relief which the Hon'ble Authority may deem fit.
15. During the arguments, learned counsel for the complainant reiterated his averments as mentioned above and further submitted that termination letter issued by respondent was not valid in the eyes of law and complainant wish to withdraw from the project in question and seeks refund of the paid amount as per provisions of the RERA,Act 2016 only.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 05.06.2023 pleading therein:

16. That the unit in question was booked by the original allottee in the year 2009 and complainant subsequent to original applicant in year 2010 approached the respondent for booking of a residential floor in the project in question. On 06.10.2011, respondent duly allotted a unit bearing no. PE-302-FF admeasuring 1371 sq. ft on the first floor to the complainant. That the complainant had opted for a Construction Linked Payment Plan (CLPP). It has been specifically mentioned that the respondent had given a timely payment discount to the complainant. Complainant has availed a total timely payment discount to the tune of ₹ 84,850/- and discount of Rs 1,02,800/- on basic sale price.
17. Respondent has admitted the allotment of the floor and execution of Floor Buyer Agreement (FBA) in favour of complainant. It is stated that in terms of clause 5.1 of floor buyer agreement dated 05.03.2012, the complainant is only entitled to get possession of the booked unit after making full payment of sale consideration and other charges payable under agreement.
18. It is further submitted that the construction of the project was going on in full swing but it got affected due to the circumstances beyond control of



the respondent such as orders of the National Green Tribunal regarding prohibiting construction activity, ban on construction by the orders of Hon'ble Supreme Court of India in the case of "M.C Mehta v. Union of India", ban by Environment Pollution (Prevention and Control) Authority etc. Further, the construction of the project had been marred by the COVID-19 pandemic whereby, the Government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondents which continued upto the year 2021. Due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondent, the construction got delayed.

19. That builder buyer agreement with the complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
20. That complainant has concealed that various demand notices dated 10.04.2019, 02.04.2020 and 06.05.2020 were issued to her and the complainant chosen not to honour them. As a result,

termination/cancellation notice was issued to the complainant on 31.10.2020. Copy of it is annexed as Annexure R-19.

21. During the course of hearing, Mr. Hemant Saini, learned counsel for the respondent offered refund of the paid amount to the complainant along with interest @ 9%. This offer was categorically denied by the learned counsel for the complainant. Learned counsel for the respondent further submitted that in case complainant wishes to withdraw from the project and seek refund of the paid amount, then the interest admissible to the complainant shall only be payable on the actual amount paid by the complainants which shall not be inclusive of the timely payment discount given by the respondent. The timely payment discount offered by the respondent on payments made within the time frame is a genuine act of good will on the part of the respondent and the same should not be considered as a part of total payment made by the complainant. The interest admissible to the complainant should only be calculated on the actual paid amount excluding the timely payment discount as the same is not actual money which has been utilised by the respondent. Further, he argued that complainant intentionally chosen not to act upon termination notice dated 31.10.2020 till filing of this complainant, she remained silent for good number of 2 years and did not even bothered to make payment in terms of demand letters issued to her. So, in case , if refund is awarded



to her then same would be subject to forfeiture of earnest money in terms of buyer's agreement.

E. ISSUES FOR ADJUDICATION

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

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

F.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, has to decide disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per



Complaint no. 2781 of 2022
agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real

Complaint no. 2781 of 2022
estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act. Or in case, if complainant wants to withdraw from the project then the respondent is obligated to refund the entire paid amount with interest.

F.II Objection raised by the respondent regarding with regard to deemed date of possession .

As per clause 5.1 of the floor buyer agreement dated 05.03.2012 possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from



the competent Authority. Taking 24 months from the date of execution of the agreement, the deemed date of possession works out to 05.03.2014. At the outset, it is relevant to comment with regard to clause of the agreement which further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. It is a matter of fact, that the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e immediately after completion of construction works within 24 months. Thus, the period of 24 months expired on 05.03.2014. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

F.III Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 5.1, works out to 05.03.2014, therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration.



Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not. The obligation to deliver possession within a period of 24 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2014, and the NGT order referred by the respondent pertains to the year 2016. It is pertinent to mention that the respondent has failed to place on record any copy of the orders of the NGT justifying the applicability of the ban so imposed upon construction.

Therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. 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*



observed that:

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

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.”

Moreover, the respondent has not given any specific details with regard to delay in payment of instalments by allottee vis-à-vis the payment schedule opted by her. Construction status with latest photographs has not been placed on record to support the fact that respondent has fulfilled its obligations and it is complainant who is shying away from her duties/obligations. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.



23. As has been admitted between both the parties, upon booking, a unit bearing no. PE302-FF, First Floor, admeasuring 1371 sq. ft had been allotted to complainant in the project of the respondent namely "Park Elite Floors, Parklands" situated at Sector 77, Faridabad, Haryana vide allotment letter dated 06.10.2011. As per floor buyer agreement dated 05.03.2012, possession of the unit should have been delivered by 05.03.2014. However, even after a lapse of more than nine years respondent is not in position to deliver possession of the booked unit to the complainant. On account of inordinate delay in delivery of possession, complainant wish to withdraw from the project and seek refund of the paid amount along with interest.

24. In respect of plea raised by Id. Counsel for respondent that even if refund of paid amount is to be awarded then same be subject to forfeiture of earnest money in terms of agreement. Relevant clauses pertaining to forfeiture of agreement is as under:-

"1.14 Earnest money shall mean 25% of the total sales consideration on the super built up area of the floor.

2.19 Timely payment of each installment of the total sale consideration i.e. Basic Sale Price and other charges as stated herein is the essence of this transaction/ agreement. In case payment of any installment as may be specified is delayed, then the Purchaser(s) shall pay interest on the amount due @ 18% p.a. compounded at the time of every succeeding installment or three months, whichever is earlier. However, if the Purchaser(s) fails to pay any of the installments with interest within three (3) months from the due date of the outstanding amount, the Seller/Confirming Party may at its sole option forfeit the amount of Earnest Money and other charges including late payment charges and interest deposited by the Purchaser(s), and any other amount of a non-



refundable nature including Incentive, brokerage charges paid by the Seller/Confirming Party to the broker in case the booking is done through a broker, etc. and in such an event the allotment shall stand cancelled and the Purchaser(s) shall be left with no right, lien or interest on the Floor and the Seller/Confirming Party shall have the right to sell the Floor to any other person. Further the Seller/Confirming Party shall also be entitled to terminate/cancel this allotment in the event of defaults of any terms and conditions of this Agreement."

In view of aforesaid clauses, respondent will become entitled to forfeit the earnest money only in event of not making payment of installments by complainant/allottee within 3 months from the due date of the outstanding amount. Fact remains that complainant has already paid an amount of Rs 23 lacs against Rs 26 lacs. Out of total paid amount, last payment of Rs 2,24,344/- was made by complainant on 04.04.2018. Thereafter, complainant stopped making payment for the reason that construction work was not going on at the required pace. Respondent issued demand letters dated 18.11.2019, 10.12.2019, 19.02.2020 and 02.04.2020. Admittedly said demand letters were not honoured by complainant. It is relevant to point out here that demand letter dated 18.11.2019 was issued by respondent for stage of 'on completion of flooring'. In lieu of same letter, reminders were issued on 10.12.2019, 19.02.2020 and final reminder notice on 02.04.2020. Despite several opportunities, when complainant still did not choose to pay, then respondent finally issued a termination notice on 31.10.2020. Though the allotment of unit stands terminated but amount paid by complainant is still lying with respondent.



Respondent first being at fault for delaying the construction/completion of unit; unit was supposed to be delivered latest upto 05.03.2014, in case if we add grace period of 6 months then also by 05.09.2014. Whereas respondent has raised demand for stage of 'on completion of flooring' in November,2019. Said act of respondent must have shattered the faith of complainant and complainant choose not to make further payments which is evident from record. To this, respondent issued termination notice on 31.10.2020 but respondent itself failed to act upon said notice by not refunding the paid amount to complainant. Infact paid amount still lies with respondent. So, if it is to be considered that complainant was liable to make payments within time then the respondent cannot expect a shadow look on its own liabilities regarding delivery of possession of the unit. Complainant sincerely paid an amount of Rs 23 lakhs till year 2018, it is the act of respondent in not completing the construction works which made complainant to choose not to pay the installments raised further in upcoming years. Respondent already being at fault cannot be allowed to forfeit the earnest money. Therefore, the plea of respondent to forfeit the earnest money is devoid of merit and hence stands rejected.

25. The facts set out in the preceding paragraphs demonstrate that construction of the project had been delayed beyond a reasonable period of time thus causing delay and suffering to the complainant. Respondent has neither developed the project in question nor returned the amount paid by the



complainant till date. Fact remains that respondent in its written statement has not specified as to when possession of booked unit will be offered to the complainant. Complainant who has already waited for a long period of time i.e. around 9 years and is not willing to wait further. In these circumstances, provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainant is seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within a reasonable period of time.

26. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" in CIVIL APPEAL NO(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. 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."

27. Keeping in view the aforesaid discussion/observation, Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount from the dates of various payments till realisation. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) 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;

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

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



Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

29. 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. 27.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.

30. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e 27.05.2024 at the rate of 10.85% and said amount works out to ₹ 31,08,319/- as per details given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 27.05.2024
1.	50,000	29.05.2009	81420
2.	2,00,000	29.05.2009	325678
3.	2,00,000	01.08.2009	321873
4.	26,385	01.08.2009	42463
5.	49,000	22.10.2009	77665
6.	1,64,354	22.10.2009	260500
7.	2,35,568	14.10.2011	322815
8.	2,00,000	21.03.2012	264621
9.	1,11,301	21.03.2012	147263
10.	3,12,963	25.03.2013	379754
11.	3,12,963	22.05.2013	374359
12.	3,12,963	22.10.2013	360125
13.	2,24,344	04.04.2018	149783
14.	Total=23,99,841/-		Total=31,08,319/-
15.	Total Payable to complainant	23,99,841 +31,08,319 =	55,08,160/-

31. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 23,99,841/- to the respondent in lieu of booked unit. On perusal of record reveals that said amount has been calculated/admitted by complainant after deducting timely payment discount provide by the respondent. Complainant itself has claimed amount exclusive of timely payment discount. Fact is that timely payment discount is a discount given by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. This amount is made a part of the payment made towards sale consideration of the booked unit. This amount is never actually paid by the allottee nor received by the respondent. It is just an added benefit towards the booked unit. Captioned complaint pertains to refund of the paid amount as the complainant is not continuing with the project, therefore, this amount cannot be entertained as payment made towards sale consideration. Only the actual amount paid by the complainant is taken for consideration in order to award refund to the complainant. In this case, complainant itself claims refund of actual paid amount only. Therefore, the total paid amount for the purpose of refund and calculation of interest is being taken as ₹ 23,99,841/- .

H. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent no. 1 is directed to refund the entire paid amount of ₹23,99,841/- with interest of ₹ 31,08,319/-. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

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

33. **Disposed of** in view of the 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]