HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**842 of 2021**
Date of filing:	**10.08.2021**
First date of hearing:	**21.09.2021**
Date of decision:	**01.02.2024**

1. **Satywan Singh Kharb S/o Sh. Gulzari Lal Kharb,**
   Village and Post office Bhaklana(94),
   Distt. Hisar, Haryana-125038

2. **Vikas Kharb S/o Sh. Satyam Singh Kharb,**
   Village and Post office Bhaklana(94),
   Distt. Hisar, Haryana-125038

.....COMPLAINANTS

Versus

Dwarkadhis Projects Pvt. Ltd
PD-4A, Pitampura, New Delhi-110088

.....RESPONDENT

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

Hearing: 11th

Present: - Mr. Rajan Kumar Hans, counsel for the complainants through VC.
Mr. Alok Mittal, counsel for respondent.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the 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, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	"Casa Romana", Sector-22, Dharuhera, Haryana (earlier project name Aravali Greenville)

2.	Name of the promoter	Dwarkadhis Projects Pvt. Ltd
3.	RERA registered/not registered Unit No.	Registered
4.	Unit No. allotted	L-041, Tower L (as per builder buyer agreement)
5.	Unit area (Super built up area)	1225.00 sq.ft
6.	Date of allotment	23.09.2013
7.	Date of Builder Buyer Agreement	19.10.2013
8.	Possession clause in BBA	***Clause 11.1*** *The developer based on its present plans and estimates should endeavor to complete the construction of the apartment within 48 months from the date of receipt of all approvals/clearances/permission necessary for the construction and development of the apartment or from the date of commencement of construction of the particular building/tower/block in which the apartment in question is situated or from the date of execution of this agreement whichever is later, excluding the grace period of six months……".*
9.	Due date of offer of possession	10.03.2019
10.	Basic sale price	₹42,43,387/- (as per pleadings mentioned in para iv)
11.	Amount paid by	₹44,12,346/-

	complainant	
12.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

i. That in year 2013, complainants got the information about the housing project "Aravali Greenville" at Sector 22, Dharuhera, Haryana. Complainants applied for a 2BHK + Study in the Project of the respondent by remitting Rs.3,49,116/-.The complainants were allotted the unit number K-111 in Tower K.

ii. That on 23.09.2013, respondent issued an allotment letter against the allotted Unit/ Flat no. K-111 Tower K, 11th Floor admeasuring 1350 sq. ft. Carpet area, in the project. This flat was allotted under the Construction Linked payment plan and along with a tentative construction schedule, for sale consideration of Rs.44,85,650/-. Copy of the Allotment letter is annexed as annexure P-1.

iii. That on 19.10.2013, a pre-printed one sided, arbitrary and unilateral Flat Buyer Agreement for allotted flat was executed between respondent and complainants. As per clause 10, of the said Flat Buyer Agreement the respondent had to complete the construction of flat and handover the possession within 4 years. A copy of the Flat Builder Buyer Agreement dated 19.10.2013 is attached herewith as Annexure P-2.

iv. That on the 19.10.2013 another pre-printed one sided, arbitrary and unilateral Flat Buyer Agreement was executed between respondent and complainant. Here in the builder had done the following changes in the Project:

a. The name of the project was changed to CASA ROMANA.
b. The size of the apartment was reduced to 1225 Sqft.
c. The allotted unit was changed to L-041
d. The Basic Sale Price (BSP) was increased to Rs.2,764.5/- per Square Feet
e. The sale consideration was reduced to Rs.42,43,387.5/-

A copy of new Flat Buyer Agreement is annexed as Annexure P-3

v. That as per the Clause 11 of the new Builder Buyer agreement, the possession was to be offered in the 48 Months computed from the date of receipt of all approvals/clearances/permission necessary for the construction and development of the apartment or from the date of commencement of the construction of the particular building/tower/block in which the apartment in question is situated or from the date of execution of this agreement whichever is later. That it is pertinent to note that the date of Builder Buyer Agreement is 19.10.2013, date of grant of environment clearance is 28.02.2014 and the excavation was started on the site on 07.06.2014. So the possession of the flat was supposed to be done by maximum 07.06.2018.

vi. That on 27.05.2014, a Memorandum of Understanding was executed between the respondent and the complainants wherein the respondent agreed to provide assured return of Rs.6/- per square feet from 15.07.2014 till the actual possession. This assured return was being provided to make sure that the complainants paid all the instalments on time and more or less was an incentive and discount for timely payments. A copy of M.O.U executed on date 27.05.2014 is annexed as Annexure P-4.

vii. That on the demand of the respondent, the complainants have already paid an amount of Rs.44,12,396/- as per the statement of account. A copy of Ledger / Account statement dated 15.07.2019 is annexed as Annexure P-5. Copies of all payment receipts are annexed as Annexure P-6.

viii. That in July 2019, complainants observed that there is very slow progress in construction of the subject flat or even the tower for a long time, despite the builder having committed in the payment plan that upto this time "floorings work will be completed."

ix. That developer has paid the "Assured Return" as the discount for timely payment only till 31.03.2019 and yet to clear the pending dues of Rs.2,79,300/- till the date of filing the present complaint.

x. That complainants raised their grievance about pending assured return as well as delayed possession to the respondent through

various verbal communications over the period of time, but the complainant soon realised that the no concrete and satisfactory answer was coming from the respondent side and also extremely slow progress of work was there on the site.

xi. That the main grievance of the complainants in the present complaint is that in spite of having paid 104% of the total amounts of flat and 85% of total BSP, on time and willing & capable of paying the rest amount, the respondent builder has failed miserably to complete the construction on site and to deliver the possession of flat on time which should be a core promise of any Flat Buyer Agreement.

xii. That complainants visited the project site many times and last in March 2021 and found that construction activity is going on very slowly since the last many months/years and the tower of the complainants, i.e., Tower -L is very far away to be completed. It is certain that it will take at least 2-3 years more to complete the project as provided by the builder due to the work at consistent speed. Current site photograph(s) of the project are annexed as Annexure P-7.

xiii. That it is pertinent to take in consideration that the License number 13 of 2013 issued to the respondent by DTCP Haryana has already expired on 17.03.2017.

xiv. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent towards the complainants and also towards the licensing authorities and as such they are liable to be punished and compensate the complainants.

xv. That in the matter of ***Fortune Infrastructure V. Trevor D'lima And Ors, (2018) 5 SCC 425*** the Hon'ble Supreme Court has held that a person cannot be made to wait indefinitely for the possession of flats allotted to him and he is entitled to seek the refund of the amount paid by him, along with compensation.

xvi. That due to above acts of the respondent and of the terms and conditions of the Builder Buyer Agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practices.

xvii. That for the first time cause of action for the present complaint arose on 19.10.2013, when a one sided, arbitrary and unilateral flat buyer agreement was executed between the parties and on 01.07.2019, when the complainant paid the last installment. Further the cause of action arose on 07.06.2018, when the respondent failed to hand over the possession of the flat as per the Builder Buyer Agreement. The cause of action is alive and continuing and will continue to subsist till

such time as this Hon'ble Adjudicating officer restrains the respondent by an order of injunction and/or passes the necessary orders. That the complainants want to withdraw from the project as the promoter has not fulfilled his obligations as provided under sections 12 and 18 of the RERA Act, 2016, therefore , now the promoter is obliged to refund the amount paid by the complainants alongwith interest.

C. RELIEFS SOUGHT

3. Complainants have sought following reliefs :

(a) Pass an appropriate award directing the respondent to refund the entire amount paid, i.e., ₹44,12,396/- till date, inclusive of the booking charges and taxes.

(b) Pass an appropriate award directing the respondent to pay interest from the date of payment till the final date of refund to the complainants at the prescribed rate under the Act and rules.

(c) Pass an appropriate award directing the respondent to clear the pending dues of ₹2,79,300/- on account of pending assured return amount.

(d) Provide 50,000/- as litigation charges.

(e) Any other relief which this Hon'ble Court may deem fit and proper in the interest of justice in the light of the above-mentioned circumstances.

D. REPLY ON BEHALF OF RESPONDENT

4. That the project " Casa Romana" is being developed by respondent is a residential group housing colony project situated at Sector-22, Dharuhera, Distt Rewari with applicable construction standards, comprising of 660 Units (2 BHK, 3 BHK etc.) comprised in 11 towers.

5. Present status of the project: The construction of 11 towers is being carried out in phased manner out of which almost 8 towers are at finishing stage and balance 3 towers are at different levels of structure. The overall project is complete to the tune of 80% if construction of all the towers is taken together. However, phase wise the work in the 8 towers range from 80~90% and upto 40% in the 3 towers. Copy of Photographs and labour working along with register showing number of labour working in the project depicting the completion of the project are annexed as Annexure - R/1.

6. That on July 01, 2017 RERA Act, 2017 and HRERA Act, 2017 were made applicable to the developer companies working in real estate in the state of Haryana and according to provisions of this Act and rules and regulations, the company was to obtained RERA registration for the project. That in due compliance of the HRERA Act, 2017 and rules and regulations issued there under, the company applied for registration of the project under HRERA vide application dated

31.07.2017. However this application was kept pending for want of renewal of license till May 2019 when the RERA registration was granted to the project with specific averments contained in point (vi & v) of order dated 20.05.2019 analysing the theory of granting the license by the State government to a project and its renewal from time to time wherein the Hon'ble authority concluded that the license/ approval of plans is a sovereign assurance of the state to the general public. Also that the state government cannot withhold renewal of license of a project in respect of which third party rights have been created. In compliance of the order, the developer has submitted the service plan estimates of the project to the HSVP vide application dated 31.05.2019. However, the Town & Country Planning Department has neither renewed the license nor approved the service plan estimates of the project in compliance of the order.

7. Simultaneously many allottees/ their banks have withheld payments since late 2017 giving excuse of not making any further payment until grant of RERA registration, despite the fact that milestones have been achieved, which led to slowdown of the construction pace of project. During this period also, the respondents borrowed money and invested in the project so that the construction could go on. All this created a Force Majeure situation for the project for the period of 31.07.2017 till the resolution of the above issues. These years /

months shall be excluded from the completion period of project. The project can be completed within a period of 18-24 months subject to clearance of pending dues and further timely payments of instalments by all the allottees who have hold the payment with the excuse of non-availability of RERA registration and non-renewal of license of the project and pendency of the resolution of the above issues.

PRELIMINARY OBJECTIONS:

8. That the complainants have neither any cause of action nor any locus standi to maintain the present complaint against respondent, especially when the complainants are actually seeking the complete amendment/ modification/ re-writing of the terms of the concluded and binding inter-se agreements entered into between the complainants and respondent in October, 2013. This is evident from the averments as well as the prayers sought in the complaint.

9. That the respondent has obtained timely approvals of revised building plan vide Memo No. ZP-873/AD (RA)/2014/15199 dated 14.07.2014, LOI to develop residential Group Housing Colony vide Memo No. 5DP-V- 2012/LC-1325/21763, dated 31.10.2012, Licence No. 13 of 2013. Endst. No. 5Dp-V-2013/LC-1325/34028 dated 18.03.2013, Environmental Clearance No. SEIAA/HR/2014/375 dated 28.02.2014 and Issue of Consent to Establish HSPCB/Consent/:2821214REWCTE1010052. dated 10.09.2014 all

licenses and approvals are attached as Annexure R/2 (Colly) to prove that the project was having all necessary permissions.

10. That not only this, upon coming into force of RERA Act, the complainant timely applied for RERA registration for License No.13 of 2013 on 31.07.2017 (for Phase 1 & 2). However, the RERA registration was not granted until 21.05.2019 because of non-renewal of license No.13 of 2013 by the DTCP, Haryana.

11. That the renewal of license was applied vide application dated 17.02.2017 for the period of 2017 to 2019 and again vide another application dated on 15.05.2019 for the period of 2019 to 2024 and is being regularly followed up. Copies of applications dated 17.02.2017 and 15.09.2019 are enclosed as Annexure R-3 (Colly), but is still pending to be renewed and is pending because of inaction of the Town & Country Planning, Haryana in spite of the directions given under the orders dated 9.05.2019 and 19.8.2019 of Hon'ble RERA Authority (PKL) and such inaction is continuously affecting the regular development of the project adversely.

12. That the DTCP-Haryana, also issued a letter-dated 07.03.2018 wherein it was stated: "*It is to inform that case for renewal of License is in advance stage of consideration. This is for your information and conveying the status of renewal of License in RERA.*" A copy of the letter dated 07.03.2018 is annexed as Annexure R-4.

13. That on 05.03.2019 the Respondent again submitted a request wherein it was informed to the DTCP-Haryana that after migration of land area of 4.86 acres and adjustment of already deposited EDC, the principal EDC has been reduced to amount of Rs.11 Crores approx. That in reply to this letter, the DTCP-Haryana, again issued a letter dated 12.03.2019 stating that *"It is to inform that case for renewal of License is in advance stage of consideration. This is for your information and conveying the status of renewal of License in RERA"*. A copy of the letter dated 12.03.2019 is annexed hereto as Annexure R-5.

14. That in absence of License Renewal and RERA registration, the allottees/ their lending banks arbitrarily stopped disbursal of instalments, which were to be paid as per construction milestones (copies enclosed Annexure R-6 Colly), which adversely impacted the progress of the project. The respondent borrowed funds from all his resources/ banks and utilized in the project but without payment from the allottees, the desired pace of the project could not be maintained. Several representations were given to the DTCP & PSTCP- Haryana, for transfer of EDC from License No. 41-42 of 2007 to License No. 13 of 2013 and renewal of license but when nothing seemed to work, representation was given to RERA Authority (Panchkula) in this regard.

15. That the RERA Authority (Panchkula) duly heard the matter and vide its order dated 09.05.2019 titled as item No. 51.7 (a copy of which is annexed as Annexure R-7) ordered to grant the RERA registration to the project (copy of RERA registration certificate is annexed as Annexure R-8) and ordered the DTCP- Haryana, to revisit their principals with a view to protect the interest of the allottees and the third parties and in overall interest of development of the real estate sector as specified in para 4 (iv) to (vii) of the order and specific directions were issued to DTCP, Haryana in para 5 (vi) of the order.

16. The Authority also directed the respondent to submit the Service Plan Estimates as per revised area to the DTCP- Haryana which were duly submitted on 31.05.2019 and the respondent had already submitted revised demarcation as per revised area of 8.376 acres on 15.03.2019 based on which the above service plan estimates were prepared. A copy of estimates submitted on 31.05.2019 as well as revised demarcation submitted on 15.03.2019 are attached as Annexure R-9 and Annexure R-10 respectively.

17. That subsequent to this, on 19th August 2019, a hearing of the matter was conducted by the HRERA, Panchkula and detailed observations were made in para 3,4 and 5. Copy of order is annexed as Annexure R-11.

That the above facts makes it abundantly clear that in- spite of all efforts made by the respondent by way of submitting timely application, providing all information, following all the directions given by the DTCP Haryana and/or the Hon'ble RERA Authority (PKL), no action has been taken by the DTCP-Haryana for the Renewal of License No.13 of 2013 and approval of its Service Plan Estimates till date despite specific directions of the Hon'ble RERA Authority (PKL) to the DTCP-Haryana.

18. That due to pendency of Renewal of License and approval of Service Plan estimates, the completion of the whole project is getting delayed because in absence of approval of Service Plan estimates the infrastructure services cannot be laid down. That the respondent as well as the allottees are continuously suffering huge financial losses. The respondent has already paid more than Rs.25 Crores on account of interest to banks/ other financial institutions for the funds raised/ arranged for completion of the project as well as the customers are also compelled to pay the EMI's on their respective Loans during this period. That due to pendency of action by DTCP-Haryana even after the directions/ decisions/ orders given by the Hon'ble RERA Authority (PKL), the same is affecting the regular development of the project and has created Force Majeure situation in the project.

19. That the main issue to be addressed by DTCP-Haryana in relation to the renewal of License No.13 of 2013 is the adjustment of interest amount of approx. 7 Crores which the DTCP-Haryana is demanding in Lic. No. 13/2013 However actually the DTCP-Haryana has to grant the interest to the respondent on the amount of EDC, which remained deposited (approx. Rs. 13.20 Crores) with DTCP-Haryana in the other license No.41-42 of 2007 of the respondent, during the years 2013 till date. The respondent was forced to deposit this amount of Rs.13.20 Crores in years 2013-2015 which was never required as the said license was covered under EDC Relief policy dated 20.12.2010 along with benefit of interest and refund the balance money. This fact is also recorded in the noting file of the License 41-42 of 2007 on page NP-148 wherein the officials had stated *".....Thus in this process, he suffered badly on account of the fact that no decision on his request was received and he had made substantial payment towards EDC, whereas which were not required, if decision for allowing policy dated 20.12.2010 had been made available to him because he fully qualify for availing this policy. .".* A copy of the page NP-148 is also attached as Annexure R-12.

20. That one complaint bearing No. 144 of 2020 titled as *"Dwarkadhis Pvt. Ltd. Vs. Department of Town & Country Planning, Haryana"* was filed before this Hon'ble Authority in the month of Aug, 2020

when the matter was taken up for the first time by this Hon'ble Authority & it was after deliberate & detailed arguments advanced by the Respondent herein, this Hon'ble Authority was pleased to issue notice to the DTCP vide order dated 29.09.2020, wherein this Hon'ble Authority categorically & rightly observed as under:

> *"The Authority would ask a question that who will be liable for the period of delay in completion of the project, when the allottees are entitled to get delay interest and compensation for the period delay. Evidently, the project is suffering due to inaction on the part of the department. In such situation, the Authority is of the view that the Town & Country Planning Department could also be held responsible & liable to bear the burden of interest and penalty leviable to be paid on account of delay in handing over the possession to the allottees."*
>
> Not only this, this Hon'ble Authority further went on to the extent to make recommendations under section 32 of the RERA Act to the Town & Country Planning Department to take expeditious decision on the above issues. A copy of the order dated 29.09.2020 is attached as Annexure R-13.

21. That on 18.03.2021 an order was passed in an Appeal preferred by the respondent before the Ld. Principal Secretary, Govt. of Haryana against the order dated 12.07.2019 wherein, the Ld. Principal Secretary, TCP Dept. Govt. of Haryana while adjudging upon the case of respondent regarding renewal of license and adjustment of EDC remanded the matter back to Director Town & Country

Planning, Haryana to consider the claim of Respondent. A copy of order dated 18.03.2021 is attached hereto as Annexure R-14.

LACK OF JURISDICTION:-

a. That the complainants have made baseless allegations of unfair trade practice, deficiency in service, etc with an ulterior motive to amend / modify or re-write any concluded agreement / contract duly executed between the parties purely to invoke jurisdiction of this Hon'ble Authority. It is trite that this Hon'ble Authority cannot adjudicate upon the matter where the prima facie prayers are for modification of the clauses of the agreement. In the instant complaint, the complainants are seeking additional benefits beyond the agreement, by seeking modification in the terms and conditions of the agreement. The complainants are virtually inviting this Hon'ble Authority to assume the powers conferred under the Competition Act and / or under the Civil Court. Therefore, ex-facie, this Hon'ble Authority does not have the jurisdiction to consider the present complaint or pass orders on the relief claimed.

b. That terms of the agreement are binding between the respective parties and as per **clause 57** of the Builder Buyer Agreement to sell, any dispute with regard to the said agreement shall be

resolved by way of Arbitration and, as such, the complainant cannot go beyond the signed agreement between the parties wherein Arbitration Clause has been specifically included. It is a settled law that the parties are bound by the terms of the contract. There is no power or jurisdiction under the Act to direct modification of any Article of the agreement. An Article of the agreement which is agreed to and binding between the parties has to be implemented in terms thereof and no direction can be given to implement the same contrary to the terms and scope thereof.

In the absence of lack of jurisdiction by this Hon'ble Authority, to entertain the present complaint, the complaint is liable to be dismissed.

22. Respondent has acted in accordance with the terms and conditions of the builder buyers agreement:

a. That respondent has acted as per the terms and conditions mentioned in the Builder Buyers Agreement.

b. That the complainants were duly aware that under Clause 9.1 of the Builder Buyers Agreement, that the building plans/layout plan were subject to change till occupation certificate is received from the competent authority.

c. That the project was mainly divided in 2 parts through a 24 Meter wide sector road wherein there were 11 towers in Part A and 4

towers in the Part B. The developer has continued with the 11 towers of Part A as there was no allottee in Part B. Also there has been no change whatsoever in the tower location/ apartment layouts/ common facilities or any other services. However looking at the grim economic situation of the real estate industry, the developer has requested the allottees of 3 towers to move to other 8 towers which are at finishing stage so that all the funds and resources can be utilized towards completing them so that the same can be handed over to the allottees. This shows that even in such situation, the intention of the developer is to hand over the units to the allottees. That in background of the above facts the respondent after making due publications in the newspapers applied to the Town and Country Planning department for migration of the land earmarked for Part B (Four Towers) under Deen Dayal Jan Awas Yojana Scheme. After due inquiry the department has allowed this application. That by migration of this land parcel norms of group housing project has not been impacted in any respect. That all these developments were duly discussed and informed to/ with the complainant.

d. The complainant were duly informed about the Schedule of Possession as per Clauses 11.1 & 11.2 of the Builder Buyers Agreement entered into between the complainants and respondent.

That on perusal of above clauses, the company endeavoured to complete the construction of the said project within 48 + 6 + 3 months unless there was delay due to a force majeure condition or due to reasons mentioned therein.

e. That respondent cannot be made liable for the delay or failure due to force majeure conditions. It has been clearly stipulated in Clause 47 of the Agreement that:

> *"The Developer shall not be responsible or liable to perform any of its obligations or undertakings provided for in the Agreement, if such performance is prevented due to Majeure conditions as described herein above."*

That the terms of the agreement must be examined in its entirety and totality with reference to the relevant clauses 11.1 & 11.2 along with Clause 47 contained therein in order to decide the grievance raised by the complainants.

f. That the RERA registration was granted on 09 May 2019 with validly up to 31.03.2021. The project was withheld for almost 2 years (from July 2017 to May 2019) because of inactions of the Department of Town and Country Planning Haryana (DTCPH) for not granting renewal of license. The respondent company fought from pillar to post for renewal of license as well as approval of service plan estimates but DTCPH has neither renewed the license nor approved the Service Estimates plan, therefore, due to inaction

of DTCPH, project was at hault and started getting delayed. The respondent has no other option other than to approach the RERA and filed a complaint against DTCPH for non-renewal of license and approval of service plan estimates.

g. That the aforesaid time period, i.e., from July 2017 and further time period up to which / fill the date of renewal of license, may be termed as "Force Majeure" condition and excluded from the delivery period/ timelines as per Clause 11.1 and 11.2 of the "Agreement to Sell" signed between the parties. Moreover, before such time, there were several country wide lock-downs due to COVID-19 Pandemic affecting the economic development across all sectors. This was termed as "Force Majeure" by WHO and accordingly several extensions were given to the real estate projects by the DTCPH, RERA Authority. The Ministry of Housing and Urban affairs (Govt. of India) vide notification no. K-14011/12/2020 dated 28.05.2020 also issued an advisory for extension of validity and time limit of all approvals, NOC's and subsequent compliances given by State and Central agencies for real estate sector due to the Force Majeure situation caused due to COVID-19 pandemic. The copies of all notifications are annexed as Annexure-R-15 (COLLY).

23. Parties are bound by the terms and conditions mentioned in the agreement:

a. That it is trite law that the terms of the agreement are binding between the parties. The Hon'ble Supreme Court in the case of "Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704" observed that that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When parties to the contract disputes the binding nature of the singed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

24. Respondent company cannot be made liable for the delay caused due to force majeure conditions:

a. That clause 47 of Builder Buyer's Agreement which clearly states that respondent shall not be liable or responsible for not performing any of its obligations or undertaking as provided in the Agreement if such performance is prevented or delayed due to force majeure conditions.

b. That the delivery of possession of the independent unit is pending on account of force majeure i.e. a pending litigation before this Hon'ble Authority and delay in renewable of license of project without there being any such fault on the part of respondent. Reference on this aspect can also be drawn from the latest judgment rendered by this Hon'ble Authority in case titled as Sunita Devi vs. Baderwals Projects Pvt. Ltd. bearing Complaint No. 526 of 2019 decided on 17.10.2019.Copy of the Judgment is attached as Annexure R/17.

c. That at the time of applying for registrations, nearly 300 workers were deployed on the site for completion of the project. However, due to non payment of installments by the allottees/ their banks, the respondent had to slow down the construction activity and consequently, large chunk of the work force, which were paid on a daily basis, migrated to other places. Subsequently, after getting the registration number of the project, the respondent has mobilized the resources, as per the directions of the Hon'ble authority, to bring the construction activity to the desired pace.

d. That however, there was considerable difficulty for respondent to gather the work force and to resume construction activity in the said project. The respondent took several months for gathering the requisite work force and for resuming the construction work in full

swing and now the respondent is following up with the allottees for payment of outstanding dues however most of the allottees are still not paying the dues. Therefore, it is amply clear that the delay in handing over possession was a result of Force Majeure conditions as covered in the Application for Allotment as well as the Builder Buyers Agreement executed between the parties.

25. Complainants have not approached this hon'ble authority with clean hands:

a. That the complainants have approached the Hon'ble Authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the purported complaint would not have arisen. It is settled law as held by the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1)** that non-disclosure of material facts and documents amounts to a fraud on not only the respondent but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in **Dilip Singh Vs State of UP 2010-2-SCC-114 and Amar Singh Vs Union of India 2011-7-SCC-69.**

b. That complainants are attempting to raise non issues and is now, at a belated stage, attempting to seek a modification of the agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least.

c. That the complainants have willfully agreed to the terms and conditions of the Agreement and are now at a belated stage attempting to wriggle out of their contractual obligations by filing the instant complaint before this Hon'ble Authority.

d. That the complainants have not mentioned anywhere in the entire complaint that the complainants were themselves chronic defaulters and failed to discharge their obligation to pay timely instalments as agreed by them in the agreement to sell and suppressed the material facts from the Hon'ble Commission, Hence the present complaint is liable to be dismissed.

e. That the complainant had carefully opted for the instalment linked payment plan out and have to make the payment of instalment against demand raised for/ on start of the construction activity/ stage. Accordingly the allottee/s have to make timely payment so that the amount so received could be utilised for the construction. The complainants made default in payment of instalment as soon as the 3rd instalment which was to be paid within 90 days of

booking. Whereas timely payment was the essence of the contract as per clause 8 of the agreement signed between the parties.

f. That respondent has launched the project of such magnitude only on the basis of booking made by the allottees in the said project and assurance of timely payment strictly as per the payment plan being opted by them.

g. That there are several demand letters and reminder notice which were issued to the complainants to release pending dues of instalments. Moreover the complainants defaulted in making payment of its instalments / dues from very beginning. Copies of Demand Letters, Notice and Request letter are annexed herewith as Annexure-R-18 (COLLY).

26. Reply on merits (facts of the case):

a. It is stated that in 2014, looking into the slump in the real estate market, the respondent company proposed the existing allottees to revise/ upgrade the apartment layouts which will be beneficial for all allottees. In the upgraded plans- the similar type of apartment was achieved in a lesser area (for example 3BHK + Servant of similar room sizes was achieved in approx 1,680 Sq.Ft area instead of 1,925 Sq.ft Area and similarly 2BHK of approx 1,225 Sq.ft area was achieved in approx 980 Sq.ft) because of more optimized designing and better lay-out. This resulted in reduction

of total cost of the apartment to all the existing allotees, including the complainants, as the sale rate per square feet was to remain same as per the original booking. That the company offered all the allottees to provide consent for the same by signing the application for change of apartment and deposit the same to the company's head office. Accordingly all the allottees gave consent with their free will to change their apartment and allot a similar type of apartment and accepted that any change in location or apartment number will be acceptable to them. Allottees also undertook not to raise any claim, title, right, interest and compensation etc. for the said apartment including their successors, assigns, legal heirs etc. and shall not file any complaint, suit, proceedings or actions of any other nature by whatever name called in this regard against the company or its representatives in future.

b. That the respondent company, after receiving the aforesaid NOC from all allottees of the project had approached the concerned authority for the approval of new layout plan of the project for which the approval was granted by the DTCP, Haryana vide letter dated 14.07.2014. The respondent company thereafter sent a fresh "Agreement to sell" to all the allottees with rubber stamp of "CASA ROMANA" with almost similar terms and condition of the original agreement to sell which was executed earlier. The

allottees were to sign the new agreement and send back to the respondent company along with the old agreement.

c. Therefore, the agreement to sell was entered with the complainants in the year 2014 and not in the year 2013. The date was written by the allottee in the agreement, however, the same is mentioned wrongly.

d. It is further submitted that the parties had entered an MOU dated 27.05.2014 whereby it was agreed that the complainants shall pay a fixed payment of amount calculated @ Rs. 6 (Rupees 6 only) per sq. ft. as rental payment/assured return to the respondent each month, It was also agreed that the complainants shall continue to make the above said payment to the respondent until and unless there is no default of payments which the respondent was supposed to make against the purchased property. A copy of MOU dated 27.05.2014 is already attached with the complaint. A bare perusal of the clause 1 and 2 of the said annexure makes it ample clear that the complainants and respondent had an understanding that the respondent shall pay a stipulated sum as an assured return provided there is no default in the payments by the complainants against the demand letters sent by the respondent. However, the complainants defaulted to make payment against the demand letters, and, as such, the respondent withdrew the scheme of

assured return in terms of clauses of the above said MOU and the respondent stopped paying the assured returns to the complainants as there was breach of clause by the him. Therefore, the respondent cannot be said to be at fault for non-payment of assured rental to the complainant as the complainant himself has breached the terms and conditions of MOU.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

27. Ld counsel for respondent reiterated all facts of the reply and made following submissions regarding grant of zero/ force majeure period:

i. That as per clause 11 of agreement signed between allottees and respondent, timeline for completion of construction was 48+6+3= 57 months from the date of receipt of approval/ permission necessary for the construction. Haryana State Pollution Control Board granted consent to construct the project on 10.09.2014 which was necessary for start of construction, as was required under environment clearance granted on 28.03.2014. Accordingly, the initial date of possession comes to July, 2019(excluding any force majeure conditions)

ii. That project of the respondent was suffering from force majeure conditions due to the inaction of office of DTCP Haryana for non renewal of license and non approval of service plan

estimates etc for approximately 5 years 9 months. It prevented the company from carrying out the construction leading to non completion of the project as license lapsed in March 2017 and was renewed by DTCP on 06.12.2022.

iii. That due to non-renewal of license, various permissions lapsed or were not granted, e.g., validity of building plans lapsed, grant of RERA registration got delayed from July 2017 to August 2019, service plans were not approved.

iv. That company kept giving representations at all levels including DGTCP, Additional Chief Secretary, T& CP Department, Hon'ble CM Haryana and Hon'ble RERA Authority.However, representations could not reach any conclusions due to frequent transfer of the officials from time to time; Covid 19 lockdown etc.

v. That in absence of RERA Registration allottees and their financing banks withheld payments since Sep-Oct 2017. Even after grant of RERA Registration in May 2019, most of the allotees and their banks did not make payment of the instalments due to non-renewal of license.

vi. That on 06.06.2022, a complaint was filed before NCLT by a group of allottees. However, matter was mutually settled between group of allottees and respondent by entering into

MOU dated 25.01.2023 wherein dates of completion of project were worked out from March 2024 to December 2024. Accordingly, the matter got disposed of as withdrawn on 16.02.2023. Further, as per terms of the MOU, the allottees group has also formed a steering committee (with few allottees from each tower) to monitor the progress of the project on a regular basis. The construction is going on at fast pace and the construction is expected to be completed well within time as per the terms of MOU wherein 4 out of 8 towers have been completed.

vii. That clause 11.1 and 11.2 of the agreement executed between allotttees and respondent states condition that allottees shall extend time for delivery of possession, if there is any delay due to force majeure conditions. Also as per clause 7.1 of model agreement to sale, annexed as Annexure-A with Haryana Real Estate (Regulation & Development) Rules, 2017, provides for force majeure conditions. Therefore, in light of clause 11 of agreement and clause 7.1 of RERD Rules 2017, agreement for sale, deemed date of possession comes to May 2025.

viii. That RERA Authority granted conditional registration dated 21.05.2019 and that too without any completion date because renewal of license was awaited from the DTCP.

ix. This Hon'ble Authority in complaint case no.1048/2018 titled as Nirmala Devi Chaudhary & another V. M/s Jindal Realty Pvt Ltd , considered intervening period where the concerned authority has failed to grant necessary approval, as force majeure period.

x. To conclude there is no fault of the respondent as it is clear from the above reasons that one thing led to the other because of delay on part of the government authorities (govt. policies, guildelines and decisions) which affected the regular development of the project. Since there is no delay on the part of respondent and if remaining 27 months (between license lapse date in March 2017 and initial date of possession in July 2019) are considered from the date of renewal of license ,i.e., 06.12.2022 the deemed date of possession comes to March 2025.

xi. Absence of valid building plans, non-renewal of license and non-approval of Service Plan Estimates (SPEs) leading to delay in grant of RERA registration and stoppage of payment of instalment by allottees/ banks, all these are force majeure conditions, beyond the control of respondent. Hence, force majeure period may be excluded from the period for calculating the delay and may be treated as zero period.

28. Ld counsel for respondent also admitted that project "Aravali Greenville" and "Casa Romana" are same projects being developed by respondent.

29. Ld counsel for complainants reiterated the facts of the complaint and stated that as per section 18 of RERA, Act of 2016, it is unqualified of right of the allootte to seek refund of the paid amount if the respondent failed to fulfil its obligations on time and complainants had made all the payments and still respondent failed to hand over possession to the complainants, therefore complainants seeks refund of the amount paid by the complainant. Also, respondent agrees in MOU before the NCLT that it will completer the tower L in which unit of complainant is located by May 2023 and the facts remains that respondent has still not completed the tower. With regard to plea of force majeure by the respondent, complainants counsel stated that said plea of respondent is unsustainable and complainant/ allottee is not concerned with the dispute between the respondent and other govt. authorities.

30. The above said oral submissions made by the respondent are similar to the applications/written submissions dated 17.08.2023 and 30.01.2024 respectively. To avoid repetitions, said applications and written submissions are not reproduced.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

32. 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 that respondent has taken the following objections w.r.t maintainability of the complaint :

1. Respondent has taken objection that complainants and respondent are bound by the terms of agreement and as per clause 57 of the flat buyer agreement it is clearly mentioned that any dispute with regard to the said agreement shall be resolved by way of Arbitration and, as such, the complainant cannot go beyond the signed agreement between the parties wherein Arbitration Clause has been specifically included. It is a settled law that the parties are bound by the terms of the contract. There is no power or jurisdiction under the Act to direct modification of any Article of the agreement.

In this regard, Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act

bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section-88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

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

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act,*

2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act

.....

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017*** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC

and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA act; e.g. S. 60 of Competition act, S. 81 of IT Act, IBC, etc. It held "*there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the*

RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the "Arbitration & Conciliation Act." Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

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

2. Second objection raised by the respondent is that complainants have made baseless allegations of unfair trade practice, deficiency in

service, etc with an ulterior motive to amend / modify or re-write any concluded agreement / contract duly executed between the parties purely to invoke jurisdiction of this Hon'ble Authority.

In this regard Authority observes that respondent has only made the vague allegations which do not sufficiently proved that which terms of the agreement are complainants seeking modifications and which additional benefits are complainants seeking beyond the agreed agreement. Furthermore, on plain reading of the builder buyer agreement it is clear that all the terms and conditions imputed in the builder buyer agreement are one sided and as such respondent is not taking any responsibility towards the allottees/complainant for non-performance of his part of contract. On the other hand respondent is transferring his liabilities to the DTCP and other govt. authorities.

In view of the aforesaid observations there remains no doubt that the complaint is maintainable as per provisions of RERA Act,2016 and the Authority has complete jurisdiction and mandate to adjudicate the same on merits.

3. It is admitted facts that complainant booked unit in the project "Aravali Greenville" at sector 22, Dharudhera, Haryana. Later, on complainant was allotted unit no.L-041, tower L, 4th floor in project "Casa Romana" which being developed by the respondent/promoter namely; Dwarkadhis Projects Pvt. Ltd and change of name of project

is also admitted by the respondent during arguments. The builder buyer agreement was executed between the parties on 19.10.2013. Complainants had paid a total sum of ₹44,12,396/- against the basic sale consideration price of ₹42,43,387/-. Respondent in its reply challenge the date of execution of agreement and said agreement was executed in year 2014, however, respondent had not mention specific date of execution of agreement nor substantiate his claim with any documentary evidence. Therefore, date of execution of agreement is taken as 19.10.2023.

As per clause 11.1 of the agreement, respondent/developer was under obligation to hand over the possession to the complainant within 48 months from the date of receipt of all approvals/clearances/permission necessary for the construction and development of the apartment or from the date of commencement of construction of the particular building/tower/block in which the apartment in question is situated or from the date of execution of this agreement whichever is later, excluding the grace period of six months. Considering the clause 11.1 of the agreement it is clear, that deemed date for possession is 48 months + 6 months from the date of receipt of all approvals/clearances/permission necessary for the construction and development of the apartment or from the date of commencement of construction of the particular building/tower/block in which the

apartment in question is situated or from the date of execution of this agreement whichever is later. As per reply, respondent received the environment clearance on 28.02.2014, building plan got approved on 14.07.2014 and Haryana State Pollution Control Board granted consent to construct the project on 10.09.2014. That means, as per possession clause, a period of (48+ 6) months is to be taken from 10.09.2014 and therefore, date of handing over of possession comes to 10.03.2019. Respondent has taken a plea that non-renewal of license led to delay in RERA registration which in turn led to allottees to stop payment/ funding, service, absence of valid building plans, non-renewal of license and non-approval of Service Plan Estimates (SPE) leading to delay in grant of RERA registration and stoppage of payment of instalment by allottees/ banks, all these are force majeure conditions, beyond the control of respondent there is no fault of the respondent as it is clear that one thing led to the other because of delay on part of the government authorities (govt. policies, guildelines and decisions) which affected the regular development of the project. Since there is no delay on the part of respondent and if remaining 27 months (between license lapse date in March 2017 and initial date of possession in July 2019) are considered from the date of renewal of license ,i.e., 06.12.2022, the deemed date of possession comes to

March 2025 and delay period is to be considered as force majeure period.

In this regard, Authority observes that it is admitted fact that respondent got license in August, 2019 by the orders of the Authority and later on, license got renewed on 06.12.2022 up to 17.03.2024. Facts remains that today also respondent is unable to hand over possession to the complainants. The plea of the respondent that it got delay due to inaction of the DTCP and other Govt. authorities stands rejected as respondent had lured the buyers/complainants to invest in its project on the promise that the unit would be completed within a period of 48 months, with six months of grace period. However, during the course of execution of the project, despite having the knowledge of various legal issues relating to renewal of license, approval of building and fire fighting plans, etc and the progress of the infrastructure development facilities, the respondent did not stop accepting deposits. By not doing so, it continued to convey the impression that the project was proceeding on track and, in fact, given the complainants no indication for any ground for concern. The contention that the complainants had been warned and informed that the project may be delayed on account of the responsibility for infrastructure creation lying with the Government/ Government nominated agencies cannot be entirely appreciated since these clauses

only convey that the respondent would not be responsible for the absence of infrastructure in the sector which was not to be executed by it.

Further, as on date, there is admittedly no offer of possession and the respondent has admitted that the project is still under construction and respondent in para U of written statement stated that company/respondent will finish the work in respect of tower L as per MOU entered between the parties by May, 2023 and apply for occupation certificate by June, 2024 and give offer for fit out. W.r.t this, Hon'ble Supreme Court in **Fortune Infrastructure Vs Trevor D' Lima (2018) 5 SCC 442** laid down that:

'a buyer cannot be expected to wait indefinitely for possession and in a case of an unreasonable delay in offering possession, the consumer cannot be compelled to accept possession at a belated stage and is entitled to seek refund of the amount paid with compensation'.

Even on today, there is no indication when this project is likely to be completed. By making merely a bald assertion that the project was delayed due to in action by the Government or its statutory organisations and cannot, by any stretch of imagination, be considered to be tenable. It is well known that the developer/respondent undertake to execute projects at the location indicated in the licence issued to them. The responsibility of

completion of the project remains that of the builder and it cannot seek to transfer this responsibility to Government entities with whom the buyer has no privity of contract. Therefore, respondent has clearly defaulted in its contractual obligations of completing the project, to obtain the occupancy certificate, offer possession of the flat within the time stipulated in the Agreement [or within a reasonable period thereafter]. The complainant cannot therefore, be compelled to take the possession of the said flat. The Hon'ble Supreme Court in **M/s BPTP Anr., vs Sanjay Rastogi, Civil Appeal no. 1001 -1002 of 2021** decided on 04.12.2021 has held that under such a circumstance, the complainant is entitled to full refund with interest.

4. Respondent had claimed the delays in renewal of license, approval of service plan estimates, adjustment of EDC, etc as force majeure and had requested the Authority to declare this period as zero period fro all intended purposes. The Authority observes that the grievances of the respondent are against the Town & Country Planning Department which has corrected the calculation of EDC payable in its record. However, Town & Country Planning Department has neither consider it as force majeure nor has declared the delay period as zero period. In the absence of the same, the Authority cannot considered

deemed it fit to declare the said period as zero period and hence the plea of the respondent is rejected.

5. Respondent has taken another plea that complaint is not maintainable or no cause of action in favour of complainant as respondent defaulted in making timely payments. Complainants choose the instalment linked payment plan and complainants have to make the payment of instalment against demand raised for/on construction activity and complainants made default in payment of instalment as soon as 3rd instalment which was to be paid within 90 days of booking.

In this regard, Authority observes that respondent had accepted delay payment made by the complainants and may have charged interest from the complainants. Moreover, respondent had accepted the payments thereafter also from the complainants, therefore, money paid by the complainants is still with the respondent and this plea of the respondent is rejected.

6. Concluding all the reasoning, Authority deems it fit case for refund along with interest as complainants do not want to continue with the project. Further, complainants are at liberty to exercise their right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

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. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

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

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it fit case for allowing refund in favour of complainant.

7. 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;*

8. 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".

9. 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.,01.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

10. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainants are entitled for refund of deposited amount along with interest. Thus, respondent is liable to pay the complainants interest from the date the amounts were paid till the actual realization of the amount. Therefore, Authority allows refund of paid amount along with interest to the complainants 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 dates amounts were paid till the actual realization of the amount. Authority has got calculated the total amounts along with interest as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 01.02.2024
1.	₹300000/-	09.08.2013	₹341463/-
2.	₹419710/-	23.09.2013	₹472104/-
3.	₹9270/-	11.10.2013	₹10378/-
4.	₹290891/-	21.12.2013	₹319508/-
5.	₹2731/-	04.01.2014	₹2988/-
6.	₹140000/-	23.06.2014	₹146115/-
7.	₹77686/-	28.06.2014	₹80964/-
8.	₹35000/-	13.10.2014	₹35364/-
9.	₹139558/-	11.11.2014	₹139805/-
10.	₹173000/-	02.12.2014	₹172226/-
11.	₹68774/-	12.12.2014	₹68262/-
12.	₹135000/-	16.01.2015	₹132590/-
13.	₹106774/-	28.01.2015	₹104487/-
14.	₹120000/-	05.06.2015	₹112864/-
15.	₹55252/-	16.06.2015	₹51786/-
16.	₹120000/-	05.08.2015	₹110688/-
17.	₹55252/-	19.08.2015	₹50734/-
18.	₹120000/-	12.11.2015	₹107156/-
19.	₹55254/-	28.11.2015	₹49077/-
20.	₹157000/-	15.02.2016	₹135763/-
21.	₹71063/-	01.03.2016	₹61133/-
22.	₹160000/-	13.04.2016	₹135598/-
23.	₹69291/-	29.04.2016	₹58394/-
24.	₹123000/-	28.06.2016	₹101462/-
25.	₹53946/-	15.07.2016	₹44227/-

26.	₹195000/-	23.09.2016	₹155812/-
27.	₹96826/-	03.10.2016	₹77080/-
28.	₹25995/-	10.10.2016	₹20640/-
29.	₹115000/-	14.11.2016	₹90111/-
30.	₹93000/-	17.11.2016	₹72790/-
31.	₹145890/-	30.11.2016	₹113622/-
32.	₹336826/-	14.03.2019	₹178823/-
33.	₹239567/-	01.07.2019	₹119425/-
34.	₹105840/-	01.07.2019	₹52762/-
	Total=₹4412396/-		₹3926201/-
Total amount to be refunded by respondent to complainant= ₹4412396/- + ₹ 3926201/- = ₹83,38,597/-			

11. Regarding relief of assured return as mentioned in clause (c) of relief clause, it is observed that complainants has opted to withdraw from the project and wants paid money to be refunded back along with interest. As a matter of fact, assured return was payable by respondent by virtue of clause 2 of Memorandum of Understanding (MOU) entered between the complainants and respondent. Now, complainants are withdrawing out from the project meaning thereby that the complainant is acting against the terms of 'MOU' as said MOU duly provides for allotment of specific unit for a sale consideration alongwith terms of assured returns. Complainants are no longer interested in having possession of said allotted unit so the terms of MOU at this stage have no meaning. By

virtue of seeking refund, complainants are coming out of the relationship with respondent-promoter as an allottee of a booked unit. In the above referred circumstances, the MOU does not hold the sanctity of an agreement as complainant wishes to withdraw his allotment out of project in question. The terms of MOU can be pressed upon only in cases where complainants are still interested in having possession of unit. Offer of paying assured returns was made by respondent only qua the possession of unit. Moreover, under Section 18 of RERA Act,2016 where the complainants demands refund of amount, promoter is liable to refund the same alongwith interest. In cases of the withdrawal from the project, the complainants are not entitled to other benefits such as assured returns attached thereto, they can only be allowed refund along with interest. Therefore, relief of assured return is hereby vacated. It is to mention that as per the pleadings of the complainant, respondent had paid assured return to the complainant from 15.07.2014 till 31.03.2019. Thus, amount of assured return paid to the complainant comes to ₹4,11,600/-.

12. Further, the complainants are seeking litigation charges. 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 PvL Ltd. V/s State of U.P. & ors."*** (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per

section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent is directed to refund the entire amount of ₹4412396/- along with interest of ₹3926201/- after deducting paid amount of assured return of ₹4,11,600/-. It is further clarified that respondent will remain liable to pay the complainants interest till the date of 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.

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

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CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]