HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1175 of 2021**
Date of filing:	**09.11.2021**
Date of first hearing:	**16.12.2021**
Date of decision:	**25.01.2024**

1. Mr. Rishabh Borde
   S/o Smt. Kumud Borde
   R/o 7336, Sector-B, Pocket-10
   Vasant Kunj, New Delhi-110070.
2. Ms. Kumud Borde
   D/o Sh. Kesari Singh Choudhary
   R/o 7336, Sector-B, Pocket-10
   Vasant Kunj, New Delhi-110070.

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. through its Directors
Registered Office 195(Basement),Ram Vihar.
New Delhi- 110092

....RESPONDENT

Complaint no.:	**1319 of 2021**
Date of filing:	**09.11.2021**
Date of first hearing:	**06.01.2022**
Date of decision:	**25.01.2024**

1. Mrs. Naintara Bhati
   W/o Sh. Cherinjit Kumar Shori

R/o 703, Dhruv Apartment, Sector-46,
Faridabad,Haryana-121003.

2. Ms. Alysha Shori
D/o Mrs. Naintara Bhati
R/o 703, Dhruv Apartment, Sector-46,
Faridabad,Haryana-121003.

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. through its Directors
Registered Office 195(Basement),Ram Vihar,
New Delhi- 110092

....RESPONDENT

Complaint no.:	**1320 of 2021**
Date of filing:	**09.11.2021**
Date of first hearing:	**06.01.2022**
Date of decision:	**25.01.2024**

1. Mr. Gyaneshwar Bhai
S/o Sh. Kesari Singh Choudhary
R/o 703, Dhruv Apartment, Sector-46,
Faridabad,Haryana-121003.
2. Mr. Kesari Singh Choudhary
S/o Sh. Kale Singh Choudhary
R/o 703, Dhruv Apartment, Sector-46,
Faridabad,Haryana-121003.

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. through its Directors
Registered Office 195(Basement),Ram Vihar,
New Delhi- 110092

....RESPONDENT

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

Present: Adv. Parikshit Goyal, Counsel for complainants.
Adv. Venket Rao, Counsel for respondent through VC.

ORDER (PARNEET SINGH SACHDEV-CHAIRMAN)

1. Captioned complaints are taken up together for hearing as these complaints involve similar issues and are against the same project of the respondent. This order is passed by taking complaint no. 1175/2021 titled as Rishabh Borde and Kumud Borde vs Rise Projects Pvt Ltd as lead case.

2. Present complaint has been filed on 09.11.2021 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Clarks Residences complex at Rise Sky Bungalows, MCF Land in Revenue Estate of Village Sarai Khawaja, Sector-41, Tehsil and District Faridabad, Haryana
2.	RERA registered/not registered	Registered, vide no. 267/2017 dated 09.10.2017
3.	Unit no.	F-605, Tower-F, 6th floor
4	Unit area	585 sq. ft Corresponding built up area 404 sq ft (including balcony area).
6.	Due date of possession (30 Months from flat buyer agreement-04.07.2014 /start of excavation-not revealed by respondent in its written statement, whichever is later)	04.01.2017 Clause (i) of 'Possession of Apartment' of allotment cum builder buyer agreement, possession of apartment is proposed to be delivered by the developer to the allottee within30 months of date of start of

		excavation or execution of this agreement (whichever is later) subject to force majeure or circumstances beyond the control of the developer, provided all amounts due and payable by the allotees as provided herein have been paid to the developer. It is, however, understood between the parties that various towers comprised in the Complex shall be ready and completed in phases and handed over, accordingly. The developer shall be entitled to a grace period of 180 days, after the expiry of 30 months for finishing construction work and applying the occupation certificate in respect of the project from the concerned Authority.
7.	Basic sales consideration	₹61,13,250/-
8.	Amount paid by Complainants	₹43,33,396/-
9.	Offer of possession	Not given.

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Complainants had booked an apartment in the project advertised by the respondent promoter under the name and style of "Rise Sky Bungalows" situated at MCF land in Revenue Estate of Village Sarai Khawaja, Sector-41,Tehsil and District, Faridabad, Haryana by paying

an initial booking amount of Rs.3,00,000/- by way of cheque no. 000013 dated 03.04.2014. On the payment of the booking amount, welcome letter for unit no. F-605 was issued by respondent on 14.06.2014. Thereafter, allotment cum agreement was executed on 04.07.2014 and apartment no. F-605, 6th floor, area measuring 585 sq.ft. was allotted to the complainants in the respondent's project, "Clarks Residences, Rise Sky Bungalows" Sector 41, Faridabad, Haryana. As per the agreement, total sale price of the apartment was ₹61,13,250/. Complainants have claimed to have paid Rs. 43,33,396/-. As per builder buyer agreement respondent was under a contractual obligation to deliver the possession of said apartment within a period of 30 months from the date of flat buyer agreement/start of excavation (whichever is later) and a grace period of 180 days was also provided to the developer for finishing construction work & applying the occupation certificate.

4. That the parties entered into an agreement of monthly investment return assurance referred as assured return agreement on 04.07.2014 stipulating the manner in which the assured return amount of Rs 1,52,000/- per annum on the total value received was to be paid by the respondent to complainants with effect from the receipt of second installment. The assured return was to be paid on a monthly basis after deducting TDS till offer of possession.

5. That respondent issued account statement dated 14.06.2014 including a payment schedule made by complainants in favor of respondent. Said document clearly acknowledges that complainants had already paid Rs 36,33,396/- out of total sale consideration. Despite receipt of said amount, respondent failed to complete the project within the stipulated time.

6. That the respondent paid assured returns to complainants till July 2017 and it has deducted TDS and provided TDS certificates on assured return.

7. That the project is no where near completion despite delay of 4 years. The status of project in March, 2021, i.e., after delay of 4 years is of incomplete structures, which appear abandoned and unattended by respondent. Respondent has also failed to refund the money or offer any alternate allotment to complainant as per terms of agreement.

C. RELIEFS SOUGHT

8. The complainants in their complaint have originally sought following reliefs:-

a) Direct respondent to refund the amount of Rs. 43,33,396/-being the total sale consideration amount paid by the complainants on different dates as mentioned along with interest amount Rs 50,01,326/- calculated @ 18% per annum.

b) Payment of Rs 1,52,100/- per annum from July 2017 onwards as assured monthly return alongwith 18% interest till date.

c) Cost of Rs. 5,00,000/- on account of mental harassment, physical troubles and stress caused to the complainants for delay in possession and default in payment of monthly assured return.

d) An amount of Rs.50,000/- towards the costs of litigation expenses.

e) Any other relief which this Hon'ble Authority may deem fit in the interest of justice.

9. **Amended Relief Sought vide application dated 04.12.2023:-**

a) Direct respondent to refund the amount of Rs. 43,33,396/-being the total sale consideration amount paid by the complainants on different dates as mentioned along with interest amount Rs 50,01,326/- calculated @ 18% per annum.

b) Cost of Rs.5,00,000/- on account of mental harassment, physical troubles and stress caused to the complainants for delay in possession and default in payment of monthly assured return.

c) An amount of Rs.50,000/- towards the costs of litigation expenses.

d) Any other relief which this Hon'ble Authority may deem fit in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 10.02.2022 pleading therein:

10. That, the agreement of monthly investment return assurance which is the foundation for seeking relief in the present case is a separate and stand alone agreement and it is not the agreement of sale for the apartment which is distinct and separate. There is no dispute asserted with regard to the agreement of sale in the complaint.

11. That, there is a distinct and separate relationship between the parties in Agreement of monthly investment return assurance and allotment letter cum agreement. Relationship between the respondent and complainant in respect of the allotment letter cum agreement is that of promoter and allotee thereby covering it under the provisions of the Act. But relationship in terms of the Agreement of monthly investment return assurance is a contractual relationship which does not fall within the purview of the RERD, Act,2016 and is not that of a promoter and allottee. Further, respondent herein does not fall under the definition of promoter as defined under section 2 (zk) as said section does not include any transaction regarding assured return. Similarly, present complainant herein, does not falls under the

category of allotee as per section 2 (d) of the Act in respect of the agreement of monthly investment return assurance.

12. That, the allotment letter cum agreement is akin to a sale agreement and creates a relationship of buyer and seller in an immovable property/respective apartment/unit whereas agreement of monthly investment return assurance is only about receiving returns and it does not create sale/absolute transfer of right, title or interest in favor of the allotee with respect to the respective apartments/units.

13. That the present complaint is not maintainable for the reason that the agreement of monthly investment return assurance which is the foundation for seeking relief in the present matter, was executed at New Delhi, by the respondent and the complainants and as per clause 16 of said agreement courts at New Delhi only have the exclusive territorial jurisdiction to entertain any dispute arising out it.

14. That the true nature of relief sought is specific performance of the agreement of monthly investment return assurance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum.

15. That the complainants are not allottee but are real estate investors and they had not booked the flat in question for their residential purpose but for investment purposes only. However, later the complainants realized that the real estate market came down, which persuaded the

complainants to withdraw their investment. As such, relief of refund and payment of assured return if awarded simultaneously then it would amount to vexation of respondent twice.

16. That, the complainants vide application dated 03.04.2014 had applied for booking of a studio apartment in a residential group housing project of the respondent being developed on a plot of land numbered as GH-02 (on Municipal Corporation of Faridabad land in Revenue Estate of Village Sarai Khawaja), Sector-41, Faridabad, Haryana.

17. That thereafter, an allotment letter cum apartment buyer agreement dated 04.07.2014 (herein after referred to as "Buyers Agreement") was executed in favour of the complainants, thereby confirming the allotment of apartment bearing No. F-605 in Tower-F on 6th floor having an area of 585sq. ft. in the project being developed in the name and style of 'Clarks Residences Complex at Rise Sky Bungalows' situated at Sector-41, Faridabad, Haryana. Complainants had invested their money in an assured return schemes of the respondent and in compliance of said arrangement between the parties, the respondent has already paid each and every penny of assured returns amounting to Rs 4,17,138/- till July,2017. However, assured returns cannot be further paid to complainants due to prevailing laws for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of

assured returns became wholly illegal. Said Ordinance was converted into an Act named, "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.

18. That the project of the respondent is at the final stage and ready for handing over for fit outs and is delayed because of 'force majeure' situation occasioned on account of non-action on the part of "Municipal Corporation of Faridabad". It is pertinent to mention that the Respondent has time and again approached to the 'Municipal Corporation, Faridabad (MCF)' for resolution of 'force majeure 'situation but despite assurances, the 'MCF'authority has taken no action to resolve the existing situation.

19. That left with no option but to accept the dominant and one sided allotment letter by MCF, the respondent complied with the terms of the allotment letter by getting approvals/licenses/sanctions on time and thereby commencing the work at site. However, the MCF did not commence any development work/services at the project site as was promised to the respondent. The respondent started to face severe hardships in developing the project due to lack of development work, which the respondent was supposed to provide within nine years of the date of allotment letter.

20. That the respondent has regularly followed up with the 'MCF' and has requested them to complete the development work in entirety, so that the project can be completed and the possession of the apartments/ units can be handed over to the allottees.

21. The respondent humbly submits that due to increasing levels of air pollution in the Delhi NCR region, the National Green Tribunal (NGT) vide its various orders and notifications had completely banned any form of construction activity for varying periods each year since 2015. In addition to it movement of diesel vehicles including trucks carrying construction materials like cement, sand, grit etc. was also banned thereby disrupting the supply chain of the raw material required for the construction of the project.

22. That it is pertinent to mention herein that ban on construction activities even for a few days completely derails the construction pace. Even though the ban is only for a few days or weeks or couple of months, as the case may be, its takes double the time to mobilises the labour and material and recommence the construction activities.

23. A detailed chart showing the days of construction ban since 2015 to 2021, and its effect on time taken to mobilise the labour and resources and restart the construction activity.

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

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

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

25. That the respondent most humbly submits that the delay has occurred due to delay caused by MCF, time to time construction ban by Hon'ble Supreme Court and Pollution Control Authorities, National Green Tribunal

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

26. That it was specifically agreed in the agreement dated 04.07.2014 that the timely payment shall be the essence of the transaction and allotment. However, the complainants regularly defaulted in payment of installments. It is noteworthy to mention that there exists a huge outstanding amount to the tune of Rs. 19,21,652/- that stands due and payable on the part of the complainants.

E. REPLY FILED BY RESPONDENT TO THE APPLICATION SEEKING AMENDMENT OF RELIEFS SOUGHT

27. Learned counsel for the respondent had filed reply to application seeking amendment of relief sought on 23.01.2024 stating that the present application is not maintainable as amendment to pleadings is barred by law after the commencement of trial as per Order VI Rule 17 of the Code of Civil Procedure,1908. In the present matter, the application for amendment of relief has been filed by complainant; after filing of reply by respondent;

trial has commenced; there has already been 11 hearings; more particularly at the stage of final arguments.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

28. During oral arguments, ld. counsel for the complainants submitted that in the present matter, booking was done in the year 2014. Complainants opted for a super flexi payment plan which is available at page 2 of agreement of monthly investment assurance agreement but respondent failed to complete the unit within stipulated time. Therefore, complainant stopped making the payment towards the unit. Further, nothing has been mentioned in the reply about the current status of the project pertaining to occupation certificate. He submitted that Complainants by virtue of Section 18 of the RERA Act, 2016 is pressing for refund of the amount paid by them. Complainants have till now paid a total amount of ₹ 43,33,396/- to the respondent on different dates. Receipts of payment has been attached in complaint file.

29. Ld. counsel for the respondent reiterated the averments made in the reply and further stated that refund at this stage when the project is almost complete is not viable as it will jeopardise the entire project.

Further, he argued that there is no fault of respondent in not receiving the occupation certificate as same is pending due to fault of MCF.

G. ISSUES FOR ADJUDICATION

30. (i) Whether the Authority has jurisdiction to entertain the present complaint?

(ii) Whether the Complainants are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:.

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

(i) Agreement of monthly investment assurance return and agreement for sale are two separate agreements and as such there is no dispute asserted with respect to the agreement for sale.

(ii) Relationship in terms of the Agreement of monthly investment return assurance is a contractual relationship which does not fall within the purview of the RERA Act,2016 as it is not that of a

promoter and allottee. Respondent herein does not fall under the definition of promoter as defined under section 2 (zk) as said section does not include any transaction regarding assured return. Similarly complainant herein does not falls under the category of allotee as per section 2 (d) of the Act in respect of the agreement of monthly investment return assurance.

(iii) Reliefs sought by the complainants are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum.

(iv) Complainants herein are not an "allottee" but an "investor" thus complaint not maintainable under RERA Act, 2016.

With respect to the objection of the respondent that the respondent and complainant herein does not fall within the definition of promoter and allottee respectively provided in the RERA Act,2016 and their relationship is a contractual relationship which does not fall within purview of RERA Act,2016, Authority observes that, firstly, it needs to be examined whether respondent (Rise Projects) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, definition of "promoter" under section 2(zk) needs to be perused. Definition is provided below:

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

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

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

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

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

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

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

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

Plain reading of the definition given under section 2(zk) makes it clear that any person who develops land into a project and constructs

apartments/floors/structures for selling it to public is a promoter in respect of allottees of those structures. Here, respondent is a developer who obtained license to develop the project for selling the apartments to public and in furtherance of said process accepted the registration application from complainant on 03.04.2014 and issued allotment letter cum agreement dated 04.07.2014 for unit no. F-605, of an area measuring 585 sq ft in its project-Clarks residences, a studio apartment (serviced by clarks Inn group of hotels) complex located at Rise Skybungalows a group housing project on GH-02, MCF land in revenue estate of Village Sarai Khawaja, Sector-41, Faridabad. Hence, respondent-Rise is duly covered under the definition of promoter under section 2(zk).

32. In the present matter complainants were allotted unit no. F-605, of an area measuring 585 sq ft in the respondent's project mentioned in above paragraph, therefore falls within the ambit of definition of allottee. Further, the unit was allotted by the respondent to the complainant-allotee for the basic sale consideration of Rs 61,13,250/-, and as per S.2(d) of the RERA Act, "allottee" is defined as follows:

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

include a person to whom such plot, apartment or building, as the case may be, is given, on rent:

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

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

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

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

An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. So, the issues involved in complaint and relief sought are well within the ambit of the Authority. Plea of respondent that reliefs sought are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum does not have merit even on the ground that Section 79 of RERA Act exclusively bars the jurisdiction of civil courts with respect to any matter which is the subject matter (real estate transaction) under the Act and falls within the purview of the Authority, or the Real Estate Appellate Tribunal. It is pertinent to mention here that the investment return assurance agreement which as per respondent is the foundation of relationship of complainant and respondent was executed only for the reason that complainants choose to be an allottee of respondent for purchase of unit/apartment. Respondent after

accepting the initial booking amount allotted unit in its project for a basic sale consideration which is evident from allotment letter cum agreement. Benefit of assured return was part of said real estate transaction not the foundation/basis of transaction. Infact complainant invested into project for getting possession of apartment which implies that allotment of unit was the basis of relationship between the complainant and promoter. It was not the case that the complainant opted to invest his amount in open market without having interest in tangible property, never wanted to perfect the title of apartment and only wanted to have the assured returns for infinite years. For reference clause 1 and 2 of agreement of monthly investment return assurance is reproduced below for reference:-

> *"1.The first party (Rise) is the lawful owner and in actual peaceful physical possession of group housing plot no. 2 (on MCF land in revenue estate of Village Sarai Khwaja) Sector-41, Faridabad, Haryana measuring area 2.64 acres allotted to the company by Municipal corporation of Faridabad (Herein after referred to as MCF) on the terms and conditions contained in allotment letter dated 12.04.2013.*
>
> *2. The first party has undertaken the construction and development of the said complex and has agreed to sell, convey, transfer and assign to the second party (complainant-allotee) a furnished studio apartment (Services by Clarks Inn Group of Hotels) apartment no. F-605 having super area measuring about 585 sq ft on 6th floor in the said complex for a total sale consideration of Rs 61,1,3,250/- calculated and the second party*

has agreed to purchase the said unit for the said consideration as per terms of allotment letter cum agreement.

The second party(complainant allottee) shall be entitled to receive assured return with effect from the date of receipt of second installment (i.e. with effect from the date of receiving of installment as per payment plan) developer/first party will pay returns of Rs 1,52,000/- per annum on the amount of T.S.V received by developer/first party. The assured returns will be modified accordingly on the receipt of subsequent installments, by developer/first party as per payment plan of T.S.V. The return shall be paid to the second party on monthly basis after deducting TDS. The return shall be payable till the date of offer of possession of unit".

33. Above referred clause clearly provides that respondent was obligated to deliver possession of apartment to complainant after completing construction work and payment of assured return till offer of possession. So, the allotment and possession of apartment was the basis even for payment of assured return. After the stage of booking or signing of agreement, complainant made payments of instalments towards allotment of apartment not only for assured return which clearly reveals the intent and purpose of investing huge amount of Rs 43,33,396/-. Buying of commercial property in a project having obtained license from DTCP is a real estate transaction and duly covered under the ambit of RERA Act,2016. So, objections raised by

respondent which are mentioned in para 31 clause (i), (ii) and (iii) of this order stands dealt with and are declared devoid of merit.

34. Further, the respondent promoter has raised an objection that the complainants are not an "allottee" but an investor, so provisions of RERA Act,2016 are not applicable and thus, complaint is not maintainable. In this regard it is noted that the concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under Section 2 of the RERA Act, 2016, there is definition of "promoter" and "allottee" and there is no definition of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled **as M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected. Hence, we have no hesitation in holding that the Authority has the requisite jurisdiction to entertain the complaint.

35. On merits, it is not disputed by any of the parties that the complainants had booked a apartment in respondent's project named, 'Rise Sky

Bungalows' at MCF Land , Sector- 41, Faridabad by paying an initial booking amount of Rs.3,00,000/- by way of cheque no. 00013 dated 30.03.2014 to the respondent-promoter. On payment of the booking amount "allotment letter cum agreement" was executed on 04.07.2014. As per clause (i) of "possession of apartment", possession was to be handed over within a period of 30 months from the date of flat buyer agreement or from the start of excavation, whichever is later subject to force majeure or circumstances beyond the control of the developer. Further, there shall be a grace period of 180 days, after the expiry of 30 months for finishing construction work and applying the occupation certificate in offering the possession of the unit. The date of excavation has not been revealed by respondent in its reply so taking period of 30 months from allotment cum buyer agreement dated 04.07.2014, works out to 04.01.2017. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 30 months for filling and pursuing the grant of occupation certificate with respect to the project from the concerned authority. However, there is nothing on record to show that the respondent has applied for occupation certificate within the time limit prescribed by the respondent/promoter in the allotment cum apartment buyer agreement, i.e, immediately after completion of construction works within 30 months. Thus, the period of 30 months expired on 04.01.2017. 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.

36. Complainants have alleged that they have fulfilled their part of the contract by paying all amounts as and when demanded by the respondent and have so far, paid an amount of Rs. 43,33,396/-. Though, the respondent promoter had not disputed the amount paid by the complainants, it has rebutted the claim of the complainants that they have made all payments. It is the stand of the respondent that it is the complainants who have defaulted in making timely payments, and there remains outstanding dues of Rs. 19,21,652/- against the complainants. To adjudicate this issue, the Authority has perused the customer ledger alongwith payments schedule and receipt information attached at page no. 67 and 70 of written statement respectively. Said document reveals that complainant had paid 6 instalments amounting to Rs 41,91,597 (exclusive of taxes) out of total 8 instalments amounting to Rs 61,13,250/- as per super flexi payment plan opted by them. 7th instalment of Rs 6,69,240/- was to be paid "within 2.5 year of booking" and 8th instalment of Rs 12,16,800/- was to be paid on "offer of possession". Fact remains that offer of possession has not been made by respondent till date so no amount stands due towards said instalment. For the 7th instalment, there is no demand letter being referred by respondent to prove that complainant defaulted in honouring said demand letter. It implies that post the payment of 6th instalment there is nothing on record placed by the respondent to show

that any further due demands were raised by the respondent and the complainants defaulted in paying the same. Hence, for the payments which were never demanded or become due, the complainants cannot be said or presumed to be at default. Thus, the contention of the respondent promoter that there is delay/default in payment on part of the complainants and therefore, they cannot seek relief of refund is not tenable.

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

a) Default by the Municipal Corporation.

Respondent has averred that the project is at final stage and ready for handing over for fit outs but it is delayed because of non-action on the part 'Municipal Corporation Faridabad' i.e., development works have not been carried out by MCF. In this regard, Authority observes that present dispute/complaint is inter se between the allotee-complainants and promoter-respondent for violation of contractual obligations in terms of allotment letter cum agreement. Both parties were obligated to honor/ fulfill terms of said agreement. Complainants have fulfilled their part by making 95% payment of total sale consideration as demanded by the respondent. However, the respondent failed to fulfill its obligations by delivering possession of apartment within stipulated time i.e. 04.01.2017. On account of said failure on part of respondent, the allotee is within his

rights to invoke the provision of Section 18 of RERA Act,2016 which provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with terms of agreement then promoter shall be liable on demand to return the amount received by him in respect of that apartment, plot or building with interest as such rate as may be prescribed. Further, on perusal of allotment cum agreement, it is evident that the construction of the apartment was the obligation of the respondent, amount for said purpose was received by respondent not by MCF. Even if any dispute between the MCF and promoter has arisen, then allotee is not being affected for the reason that allotee has not entered into the agreement with the MCF. As per the allotment letter cum agreement, the respondent was under obligation to construct the unit. In the present case, the question involved is completion and handing over of the apartments which is the sole obligator of the respondent. Here construction of the unit has not been completed itself by respondent as is evident from customer ledger and statement of account issued by respondent. Demand upto 8th installment pertaining to offer of possession has not been raised by respondent as no offer of possession is being issued by respondent to complainants till date. Respondent has not carried out the construction of the unit to its complete extent/finishing extent without any detailed justification for it. Casting liability upon MCF for non-completion of project at this stage is not appropriate. Hence the

plea of the respondent promoter, i.e., the project got delayed due to fault by MCF is rejected.

b) Ban imposed by the NGT on construction activities

Respondent has stated that the project got delayed due to ban imposed by NGT on any form of construction activities. On perusal of table reproduced in paragraph 23 of this order, it can be seen that the ban imposed by NGT before the deemed date of possession,i.e., 04.01.2017 was for only 8 days on or before 04.01.2017, 10 days are from 08.11.2017 onwards that is after 04.01.2017. On account of said 18 days, respondent has sought time period of 30 +35 days as force majeure for again mobilizing the work. In this regard, Authority is of view that in the large projects like one in this case, majority of the labour is normally settled at the project site itself. So, ban of few days, like 18 is not a type of condition wherein the labour gets shifted/displaced to another place and then the developer again needs to invest time to relocate the labour required for construction at site. Even if we look at this case in different perspective, then ban of 8 delays particularly can be attributed towards delay in construction of project then deemed date of possession will work out to 22.01.2017. Further, the bans due to NGT orders mentioned in the table by respondent are pertaining to the period after expiry of deemed date of possession. So, said period is not accountable for the delay caused in

present case. It will only be the period of 18 days ban which is to be considered towards delay in completion of project. Factual position is that delay caused in completion of project in this case is in years ranging from year 2017 to till date and construction activity got stopped at site only for 8 days, thus delay of years in completing the project on the basis of said ban is not justified. Though Authority even if allows the grace period of 8 days, the labour which is settled at project site, generally does not get migrate due to 8 days ban. In case, relief of 8 days grace period if allowed on account of NGT ban, even then the deemed date of possession has already passed and project is still not near completion. Hence, the plea of the respondent that the project got delayed due to bans imposed by NGT is rejected.

c) COVID- 19 Pandemic.

Respondent has raised a plea that construction activities got severely hampered by pandemic Covid-19 due to reverse migration of the labourers. As a matter of fact, Covid-19 pandemic had resulted into nation wide lockdowns w.e.f. March, 2020. In this case, the deemed date of possession was 04.01.2017, which was way before the outbreak of COVID-19 pandemic. Any circumstances or conditions which took place after expiry of period of deemed date of possession cannot be counted towards delay in project, therefore the respondent cannot take the plea that delay in handing over the possession is

caused due to COVID- 19. As far as delay in construction, due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

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

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself."

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

38. Respondent had filed an application on 08.05.2023 seeking impleadment of MCF as necessary party, i.e., respondent no. 2 to complaint

for effective adjudication of complaint on the ground that this Authority vide its order dated 24.11.2022 passed in ***Complaint no. 430 of 2020 titled as Rise Projects Pvt. Ltd. v. Municipal corporation Faridabad*** categorically held that MCF is a co-promoter with respect to the individual allottees of the respondent. In this regard, Authority observes that agreement for sale, i.e., allotment letter cum agreement was entered into between the complainants-allotee and respondent wherein respondent itself specified time period for handing over possession of the unit. Said obligation pertaining to construction of the unit and handing over of possession was only upon the respondent, MCF was never involved towards the phase of construction of the unit/apartment. It is only for the developments works/amenities such as roads, sewage disposal line, water supply, storm water drainage etc. the MCF was under obligation to complete them. Authority in its order dated 24.11.2022 passed in complaint no. 430 of 2020 has stated that the development works in the project can only be undertaken by MCF when rise developers-respondent completes the construction of the project. In case of failure on part of respondent-promoter to deliver possession, Section 18 of the RERA Act,2016 comes into picture wherein it is stated that, *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein then respondent shall be liable on demand to the allottees, in case the allottee*

wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. Looking to facts of this case in light of aforesaid section, it is apparent that respondent-Rise Projects Pvt Ltd failed to complete the construction of the unit which was a specific obligation cast upon it in terms of allotment cum agreement meaning thereby that respondent has failed to give possession of unit to complainant in terms of allotment letter cum agreement and therefore, respondent is under an obligation to return the paid amount with interest. The role of MCF vis-à-vis the construction part of the unit is not at all established, as obligation to undertake/carry out the construction of the unit was always entrusted upon the respondent and not the MCF. Scope of MCF was limited only for the purpose of developments works of the project which were to be carried out after completion of construction, which in this case has not got completed to the extent of stage of plaster as 11th installment pertaining to stage of plaster was never raised by respondent. MCF has nothing to do with the obligations cast upon respondent in terms of allotment letter cum agreement specifically pertaining to construction and delivery of possession of unit/apartment. Respondent under the garb of external development works cannot be allowed to shirk the responsibilities cast upon it. Moreover, stage of external development works has not yet been arrived in this particular case as

construction of the unit is still lying incomplete which is evident from the photographs of the project placed on record by complainant and fact that 11th installment pertaining to stage of plaster has not been raised till date. Accordingly, Authority decides that MCF was never entrusted upon the construction work of the unit as it was specific obligation upon respondent only, thus Authority is of the considered view that MCF is not a necessary party to the complaint and therefore, the application for impleadment of MCF as respondent no. 2 stands rejected.

39. Perusal of file reveals that complainant had filed application for amendment of relief sought in registry on 04.12.2023 whereby refund of paid amount alongwith compensation for mental harassment and litigation cost was prayed by giving up claim of monthly assured return. Respondent had filed its reply in registry on 23.01.2024 stating that said application is not maintainable as amendment to pleadings is barred by law (Order VI Rule 7) after the commencement of trial. In this regard, Authority observes that on the one hand, respondent itself in its reply has stated that in case if refund and assured returns both reliefs are awarded simultaneously then it would amount to double penalty upon builder. On the other hand, respondent is challenging amendment application. Factual position reveals that respondent even after delay of 6-7 years after deemed date of possession is not in a position to deliver legally valid possession of apartment to complainant as occupation certificate has not yet been received. As a matter of fact,

occupation certificate has not yet even been applied for by respondent. Complainants rightly are under apprehension that they will not receive legal and valid possession of their apartment even in near future. Respondent's act of not paying assured returns is not the sole reason for withdrawing out of the project. Respondent even today in a manner has clearly highlighted that possession of unit cannot be given to complainants as there is no occupation certificate, on the other hand, refund of paid amount with interest also cannot be awarded to complainants as amendment application not be allowed to complainant in present complaint rather complainants may file fresh complaint after withdrawing this complaint. Hence, the complainants are not allowed to be proceeded further in any direction, not even withdrawing out of project. In this scenario, RERA Act,2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take benefit of his wrong(by not delivery possession of unit till date and not even allowing amendment of relief sought). By virtue of Section 18 of RERA Act,2016, the respondent is obligated to refund the paid amount with interest to the allotee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein. Further, it has been argued by respondent that complainants are seeking refund for the reason that real estate market has gone downwards. As a matter of fact, post year 2022 the prices in real estate market is seeing a upward slide. Application filed by complainant seeking amendment of relief sought is

appropriate in light of facts and circumstances of the case and aforesaid discussion. Moreover, complainants cannot be kept waiting for indefinite time period for possession and no harm of any kind is caused to respondent if amendment application stands allowed. So, the contention of respondent of not allowing any amendment at this stage does not hold any merit.

40. Today is the 12th hearing in the matter and factual position of the case is that respondent failed to honor its obligations to deliver possession of booked apartment as per the time stipulated in the agreement for sale (allotment letter cum agreement), i.e., by 04.01.2017 without any valid/reasonable justification. Respondent is in receipt of total paid amount of Rs 43,33,396/- since 27.06.2016 but the unit is not yet ready for handing over of possession and there is no hope of its completion alongwith receipt of occupation certificate even in near future. In light of these facts, complainants have prayed for relief of refund of the amount paid by them along with prescribed rate of interest from the date of respective payments for inordinate delay in completion of project.

41. With respect to the rights of the allotee to seek refund from the Authority, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

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

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

42. Keeping in view the aforesaid observations, Authority cannot force the complainants to endlessly wait for respondent to complete the project and deliver possession. Complainants are well within their rights to seek refund of the money paid by them by the virtue of Section 18 of the RERA Act, 2016. Thus, the Authority considers it a fit case for grant of refund along with interest at the prescribed rate. Therefore, as per provisions of Section18

of the Act, relief of refund as sought by the complainants deserve to be granted.

43. 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;

44. 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. 25.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.

45. 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".

46. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 43,33,396/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of this order and total amount of interest works out to Rs 41,08,054/- as per detail given in the table below:

Complaint no. 1175/2021

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 25.01.2024
1.	3,00,000	03.04.2014	3,19,703
2.	12,29,992	31.05.2014	12,89,569
3.	38,007	25.06.2014	39,565
4.	5,00,000	17.10.2014	5,03,559
5.	1,69,240	17.10.2014	1,70,445
6.	2,81,122	29.04.2015	2,66,911
7.	4,00,000	29.04.2015	3,79,780

8.	7,15,035	06.11.2015	6,38,292
9.	7,00,000	27.06.2017	5,00,230
10.	Total=43,33,396/-		Total= 41,08,054/-
11.	Total Payable to complainant	43,33,396+ 41,08,054=	84,41,450/-

Complaint no. 1319/2021

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 25.01.2024
1.	2,00,000	24.03.2014	2,13,730
2.	8,05,128	14.04.2014	8,55,375
3.	6,03,077	10.09.2014	6,14,003
4.	6,03,077	26.03.2015	5,78,686
5.	3,00,000	16.10.2015	2,69,675
6.	3,05,475	16.10.2015	2,74,596
7.	6,10,448	31.05.2016	5,07,368
8.	6,10,448	07.06.2016	5,06,097
9.	6,12,202	22.03.2017	4,55,140
10.	Total=40,39,407/-		Total= 42,74,670/-
11.	Total Payable to complainant	40,39,407+ 42,74,670=	83,14,077/-

Complaint no. 1320/2021

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 25.01.2024
1.	2,00,000	24.03.2014	2,13,730
2.	38,20,510	14.04.2014	40,58,941
3.	Total=40,20,510/-		Total= 42,72,671
11.	Total Payable to complainant	4039407+ 4272671=	82,93,181/-

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

H. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent is directed to refund the entire amount to each of the complainants as got calculated and mentioned in

paragraph 46 of this order after deducting paid amount of assured return to respective complainant.

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

49. The complaint is, accordingly, **disposed of.** 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]