



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	08.07.2024
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Name of Builder	RAS Development Pvt. Ltd.
Name & Location of Project	RAS Basera. Sector 16, Taraori, District Karnal, Haryana

Sr. No.	Complaint No(s).	Complainants
1.	505 of 2023	<p>Mrs. Inderpreet Kaur W/o Sh. Kulminder Singh, R/o 4-C/6, Second Floor, Old Rajinder Nagar, Delhi, Rjinder Nagar, Central Delhi-110060</p> <p>.....Complainant no. 1</p> <p>Mr. Kulminder Singh S/o Sh. Gurinder Singh R/o 4-C/6, Second Floor, Old Rajinder Nagar, Delhi, Rjinder Nagar, Central Delhi-110060</p> <p>.....Complainant no. 2</p> <p>Versus</p> <p>M/s RAS Development Private Limited, Registered office at Flat no. 203, 2nd Floor, 43, Chiranjiv Tower, Nehru Place, New Delhi-110019 through its Managing Partner</p> <p>....Respondent</p>

2.	515 of 2023	<p>Mrs. Payal Ghai W/o Sh. Harinder Ghai, R/o 14-A/5, 2nd Floor, Front Side, Wea Karol Bagh, New Delhi-110005Complainant no. 1</p> <p>Mr. Harinder Singh Ghai S/o Mr. Gurinder Singh Ghai R/o 14-A/5, 2nd Floor, Front Side, Wea Karol Bagh, New Delhi-110005Complainant no. 2</p> <p style="text-align: center;">Versus</p> <p>M/s RAS Development Private Limited, Registered office at Flat no. 203, 2nd Floor, 43, Chiranjiv Tower, Nehru Place, New Delhi-110019 through its Managing PartnerRespondent</p>
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CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present:-Adv. Arpita, proxy counsel for complainants through VC (in both complaints)

Adv. Shubhnit Hans, counsel for the respondent (in both complaints)

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of above captioned two complaints filed by the complainants before this Authority 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. These two complaints are taken up together as facts and grievances of the complaints more or less are identical and relate to the same project of the respondent, i.e., "RAS Basera", situated at Sector 16, Taraori, District Karnal, (Haryana). The fulcrum of the issue involved in these cases pertains to failure on the part of respondent/promoter to deliver timely possession of unit in question. Therefore, complaint no. 505 of 2023 titled "Mrs. Inderpreet Kaur & Mr. Kulminder Singh versus M/s RAS Development Pvt. Ltd" has been taken as lead case for disposal of these two matters.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project have been detailed in the following table:

SR. No.	Particulars	Details
1.	Name and location of project	Ras Basera, Sector 16, Taraori, District Karnal, Haryana
2.	Nature of the Project	Affordable Group Housing Project
3.	Name of the Promoter	RAS Developments Pvt. Ltd.



4.	RERA registered/not registered	Registered vide registration no. 283 of 2017 dated 10.10.2017
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4. Further the details of sale consideration, the amount paid by all the complainants and proposed date of handing over of the possession have been given in following table:

Sr. No	COM PLAIN T NO.	Apartment No. and area	DATE OF AGREEM ENT/ALL OTMENT LETTER	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERA TION (IN RS.)	TOTAL AMOUNT PAID BY THE COMPLAIN ANTS AS PER RECEIPTS (IN RS.)
1	505 of 2023	1105, Tower-A-7, Carpet area- 479.51 sq. ft. Balcony area- 100 sq. ft.	Allotment letter- 19.11.2019 BBA- not executed	20.10.2019 (4 years from the date of sanction of the building, i.e, 20.10.2015, as ascertained in para 37 of the order)	₹14,88,530/-	₹11,00,000/-
2	515 of 2023	1106, Tower-A-7 Carpet area- 479.51 sq. ft. Balcony area- 100 sq. ft.	Allotment letter- 19.11.2019 BBA- not executed	20.10.2019 (4 years from the date of sanction of the building, i.e, 20.10.2015, as ascertained in para 37 of the order)	₹14,88,530/-	₹9,50,000/-



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANTS

5. That in response to the advertisement of the respondent as per the Haryana Government Affordable Group Housing Policy, 2013, the complainants, applied in the draw of allotment of the apartment in the project of the Respondent, and were allotted apartment bearing No. 1105, in Tower A- 7, TYPE-3, 2BHK having carpet area measuring 479.51 Sq. Ft. and balcony area measuring 100 Sq. Ft. for a total sale consideration of ₹14,88,530/- via an Allotment Letter dated 19.11.2019. The allotment letter dated 19.11.2019 is annexed as Annexure-C2.
6. That the complainants have been making timely payments towards the project regularly and have already paid a sum of ₹11,00,000/- till 04.06.2022, which is more than 88% of the total sale consideration of the unit. The Statement of Accounts/Ledger dated 09.08.2022 is annexed as "Annexure C3".
7. That the respondent vide letter dated 07.06.2022 gave discount of ₹2,50,000/- to the complainants and after deducting the discounted amount from the total sale consideration, an amount of ₹1,38,530/- is left to be paid by the complainants. The letter of discount dated 07.06.2022 is annexed as "Annexure C4".



8. Respondent was under an obligation to execute a Builder-Buyer Agreement (BBA) qua the allotment of the said unit. However, respondent failed to adhere to the execute the same and has accepted more than 88% of the total sale consideration of the unit allotted to the complainants, without executing a Builder-Buyer Agreement with the complainants.
9. That the respondent has been demanding early payments from the complainants and has deviated from the payment schedule as prescribed in the Affordable Housing Scheme, 2013, which clearly stipulates that the allottee has to pay only 5% at the time of booking, 20% at the time of allotment and remaining payments shall be made in equated six-monthly instalments spread over a period of three years with no interest falling due before the due date for payments as per Clause 5 Sub-Clause III point B of the Notification of Affordable Housing Scheme, 2013.
10. That the Respondent has deviated from the terms and conditions of the "Time of Payment" as prescribed in the Notification of Affordable Housing Policy, 2013. It was orally assured by the respondent to the complainants that the rest of the balance amount i.e, ₹1,57,285/- shall be paid only after a legal offer of possession of the unit will be made to them.
11. That as per the Clause-5, Sub-Clause (III) Point B of the Notification of Affordable Housing Policy, 2013, the respondent was under an obligation to



offer the possession of the unit within 4 years of the sanctions of building plans. As per the documents so submitted by the respondent to Haryana RERA, the last building plan was sanction on 20.10.2015. Hence, the due date of offer of possession is 20.10.2019. That the Respondent has delayed in offering possession of the unit by 3 years and have not complied with the terms and conditions of the Affordable Housing Policy, 2013. The relevant portion of the notification is reproduced as under.

"All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance..."

12. The last approved building plan dated 20.10.2015 is annexed as "Annexure C5. Further, respondent approached the complainants to take the possession of the unit and to make all the payments due towards the said unit. The complainants declined the said offer as the same was arbitrary, illegal and was without receiving the Occupancy Certificate. It is submitted that the unit of the complainants has not been completed and even the basic amenities like water, electricity which are required for a unit to be habitable were not available.
13. It is also pertinent to mention here that the respondent arbitrarily and without the consent of the complainants has increased the area of the said unit to



488.88 sq. ft. along with balcony area of 81.29 sq. ft and is now claiming the total cost of ₹15,07,285/- which is illegal and arbitrary as the same was done without taking the consent of the complainants.

14. That it is evident, the unit is incomplete and not ready for habitation. It is also submitted that without the issuance of the occupancy certificate any possession offered is invalid. However, till date no lawful offer of possession has been made to the complainants making the demands illegal and the cancellation brought on by failure to pay such a demand illegal as well.
15. That on 01.09.2022, respondent sent a notice of cancellation dated 17.08.2022 to the complainants claiming that the complainants have not paid the due amount as per the payment schedule of the payments as per builder buyer agreement. Respondent also claimed that the notice of cancellation was duly notified through advertisement in newspapers as per the policy terms. However, the respondent has failed to attach name, copy of the newspaper in which notification was advertised. It is further submitted that without any sufficient cause, respondent has illegally cancelled the unit of the complainants. The complainants had already paid 88% of the total sale consideration of the unit till 04.06.2022 and it was agreed between the parties that the remaining amount shall be paid after a legal offer of possession. The cancellation notice dated 17.08.2022 is annexed as "Annexure C6".



16. That the respondent cannot enjoy the non-compliance of the terms and conditions of the Affordable Housing Scheme and then enforce them on the complainants for interests. Due to the malafide act of the respondent, complainants also issued a legal notice dated 16.09.2022, to the respondent where the complainants requested the respondent to withdraw the said illegal cancellation letter of the unit; however, the respondent did not withdraw the said illegal cancellation letter. The copy of the legal notice dated 16.09.2022 with postal receipt is annexed as Annexure C7.
17. That the Respondent failed in complying with all the obligations, not only with respect to the agreement with the complainants but also with respect to the concerned laws, rules and regulations thereunder, due to which the complainants faced innumerable hardships and caused the complainants to go through mental agony and financial distress. It is further submitted that taking advantage of dominant position and malafide intention, respondent has resorted to unfair trade practices by harassing the complainants by way of not executing any agreement for sale and delaying the project.

C. RELIEF SOUGHT

18. In view of the facts mentioned in complaint book, the complainants prays for following:



- i. To direct the respondent to recall the cancellation notice dated 17.08.2022, cancelling the allotment of the unit of the complainants.
- ii. To direct the respondent to pay the delay possession charges to the complainants at the prescribed rate of interest for every month of delay on the amount paid by the complainants from the due date of possession till the actual date of handover of physical possession.
- iii. To direct the respondent to offer lawful and valid possession of the said unit to the complainants and handover the peaceful physical possession.
- iv. To direct the respondent to take balance amount only after completing the remaining development and construction of the project and after adjusting the delay possession charges from the balance amount to be paid by the complainants.
- v. To direct the respondent to pay a sum of ₹11,000/- for legal costs towards legal notice.
- vi. To direct the respondent to pay a sum of ₹1,00,000/- for litigation cost.
- vii. To pass any other order in the interest of equity and justice.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

19. Respondent in his reply has averred that the complainants in the year 2019, relying on the advertisements of the respondent applied in the draw of the allotment of the apartment in the project of the Respondent namely "RAS Basera" at Sector 16, Taraori, District Karnal, Haryana. Pursuant to the said application and after drawing of the allotment lots, the complainants were allotted a unit in the said affordable group housing project by way of an Allotment Letter bearing ref no. RAS/RB-T/A7-1105 dated 19.11.2019 for an Apartment No. 1105 in Tower A-7, Type 2, 2 BHK Apartment admeasuring 488.88 sq. ft amounting to Rs. 15,07,285/-. Inadvertently, in the allotment letter dated 19.11.2019, the amount of 2BHK (Type-1) Apartment admeasuring 479.51 sq. ft. was mentioned.

20. As per clause 17 of the said Policy, it was agreed that,

"In case present application of the applicant is successful in the said draw of lots, he shall be required to deposit additional 20% amount of the total cost to the Company at the time of allotment of the flat. The balance 75% shall be payable by the applicant in six equated monthly instalments spread over three years period with no interest falling due before the due date for payment. Any default in payment by the applicant shall invite interest @15%p.a."

21. Accordingly, the demands were raised by the respondent for payment of the amount. As per Clause 21 of the Affordable Housing Policy, 2013, it was agreed that,



"That the Company shall sincerely endeavour to offer possession of the said Flat to the Applicant within the validity period of 4 years of sanction/ clearance of building plans or receipt of environmental clearance whichever is later subject to the force majeure conditions....."

22. That the complainants were allotted the said unit vide allotment letter dated 19.11.2019 and were to enter into Builder Buyer Agreement for detailed terms and conditions. As per clause 3.1 of the Builder Buyer agreement, the flat is to be constructed within 4 years from the date of this agreement subject to receiving of timely payment from the allottees. The agreement is yet to be signed by the complainants. Therefore, the complainants cannot take the plea that there is delay on the part of the respondent. There is no delay on the part of the respondent in completion of the project as respondent has already completed the development and construction of the said unit/project and is under process to apply for completion/occupation certificate with the concerned authority.
23. Further, as per clause 17 of the Affordable Housing Policy, the complainants were bound to make payment in six equated monthly instalments spread over three years period with no interest falling due before the due date for payment. However, as per the ledger attached by the complainants themselves, there is delay on the part of the complainants in making payment of the due amount towards the said allotment. Accordingly, the complainants have breached the terms of the policy/agreement. Hence, the respondent is



entitled for cancellation of allotment. However, if the complainants wish to get possession of the said flat, they are at liberty to take possession of the said flat on payment of the balance due amount with upto date interest. Moreover, as on 31.10.2022, the complainants are liable to pay a sum of ₹4,07,285/- towards principal amount and interest of ₹1,47,761/-. Thus, total amount payable by the complainants inclusive of interest as per statement of account of the respondent dated 31.10.2022, comes to ₹5,55,046/-. A copy of statement of account dated 31.10.2022 is annexed as "Annexure-R3".

24. That the respondent has handed over the builder-buyer agreement to the complainants by hand for their signatures but the complainants have not signed and returned the agreement for the reasons best known to them. Further, the allotment to the complainants is done under the Affordable Housing Policy and demands have been raised by the respondent in terms of clause 17 of the said Policy. However, the complainants have failed to fulfill their part of obligations to make timely payment. Despite the fact that no timely payments were made by the complainants/allottees, the respondent has completed the development and construction of the said project and is under process to apply for occupation certificate with the concerned Authority. Thus, there is no fault on the part of the respondent. A copy of the builder



buyer agreement is annexed as "Annexure-R4". Recent photographs of the said Unit are annexed as "Annexure-R5".

25. Further, it is denied that respondent unilaterally or illegally cancelled the allotment of the complainants without any sufficient cause. The unit was allotted to the complainants under Affordable Group Housing Policy and demands for payment were raised by the respondent in terms of clause 17 of the said Policy. However, the complainant defaulted in making timely payments of the due amount, which is evident from the Statement of Account/Ledger (Annexure-C3), filed by the complainant themselves. Accordingly, on persistent default by the complainants in making timely payments, the allotment was cancelled. A copy of the demand letters are annexed as "Annexure-R6".

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

26. Ld. counsel for complainants reiterated the basic facts of the case and stated that unit booked by the complainants got cancelled by the respondent on 17.08.2022. She further requested the Authority to direct respondent not to create any third party rights on the unit booked by the complainants. Further, she denied that complainants have received any copy of the builder buyer agreement from the respondent. As per Affordable Housing Policy 2013, the



respondent was under an obligation to handover the possession of the unit in the year 2019. However, now it is 2024 and neither the possession is delivered nor occupancy certificate has been obtained by the respondent till date.

27. Authority enquired from the ld. counsel for complainants that whether they want to continue with the project or not? To which, she affirmed that complainants are still interested in getting the possession of the unit.
28. On 02.11.2023, Authority ordered the respondent to place on record the documents:
 - a. Showing proof of receipts that the BBA sent to the complainants and the same was received back unsigned by the respondent.
 - b. Whether any third party rights have been created on the said unit of the complainants?
29. Ld. counsel for respondent submitted that he has sought instructions regarding the directions passed by the Authority on 02.11.2023. With regard to the first direction, he stated that BBA was handed over to the complainants for their signatures. However, same was not complied with. Additionally, with regard to the second direction, ld. counsel for respondent submitted that no third party rights have been created by the respondent on the unit of the



complainants. He further stated that occupancy certificate has not been granted by the competent Authority to the respondent till date.

F. ISSUES FOR ADJUDICATION

30. Whether the cancellation made by the respondent on 17.08.2022 is valid or not?
31. Whether the complainants are entitled for possession of the booked flat along with delay interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by learned counsel for complainants and the respondent, the Authority observes as follows:

32. Complainants in this case have booked an apartment bearing no. 1105, in Tower A-7, TYPE-3, 2BHK having a carpet area measuring 471.51 sq. ft. for total sale consideration of ₹14,88,530/- through an allotment letter dated 19.11.2019 in the project of respondent namely; "Ras Basera" at Sector 16, Taraori, District Karnal, Haryana. Complainants have already paid an amount of ₹11,00,000/- till 04.06.2022 out of the total sale consideration to the respondent. Builder buyer agreement has not been executed between the parties.



33. The respondent, in his reply, has asserted that the total sale consideration for the project is not ₹14,88,530/-, but rather ₹15,07,285/-. Additionally, the carpet area and balcony area are not the same as stated by the complainants in their pleadings. According to the respondent, the carpet area and balcony area of the booked unit are 488.88 sq. ft. and 81.29 sq. ft. To substantiate this claim, the respondent has attached an allotment letter dated 19.11.2019, marked as "Annexure R-1".
34. Authority perused both the allotment letters dated 19.11.2019 submitted by the complainants and the respondent and has come to a conclusion that the complainants have provided an allotment letter that bears the signatures of both parties, indicating mutual agreement and acceptance of the terms specified in the document. In contrast, the respondent has submitted an allotment letter that is signed only by the authorized signatory of the respondent. This discrepancy highlights that the complainants' document reflects a bilateral agreement, whereas the respondent's document represents a unilateral assertion, lacking the complainants' acknowledgment or consent. Therefore, in accordance with legal principles, documents signed by both parties are considered valid and enforceable, whereas a document signed only by one party lacks the necessary mutual consent to be deemed valid. Thus, Authority deems appropriate to conclude that the allotment letter annexed by



the complainants is valid and binding on both the parties and complainants have been allotted a unit on 19.11.2019 for total sale consideration of ₹14,88,530/- with carpet area of 479.51 sq. ft.

35. It is further observed by the Authority that builder buyer agreement has not been executed between the parties. Although respondent has annexed a copy of agreement in his reply, but the same is not signed by both the parties. Therefore, the same cannot be considered or relied upon by the Authority. The question before the Authority now is to calculate the deemed date of possession, as to when respondent was obligated to handover the possession of the booked unit to the complainants. With regard to the same, Authority replied upon the offer of allotment dated 19.11.2019 annexed by the complainants in their complaint, wherein it is clearly mentioned that *“you are aware that the allotment of the aforesaid apartment is being made under the “Affordable Group Housing Policy, 2013” as amended up to date, therefore, inter alia, all the terms and conditions of the said policy shall be applicable and binding”*. Therefore, to calculate the tentative deemed date of possession, Authority referred to the clause 5, sub clause (III) point B of the notification of the Affordable Housing Policy, 2013, which states that:

“All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental



clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance."

36. As per the above said clause, it is clear that the respondent was obligated to offer possession of the unit to the complainants within 4 years of the sanction of building plans or receipt of environmental clearance whichever is later. Complainants have also averred in their pleadings that as per the documents submitted by the respondent to Haryana RERA, the last building plan was sanctioned on 20.10.2015. The respondent has not disputed this date in his pleadings. Further, respondent has neither disclosed in his pleadings nor annexed any document proving the date of receipt of environmental clearance of the project. Authority concludes that a period of four years is to be taken from the date of approval of building plan for calculating the deemed date of possession. Thus, four years from the date of sanction of building plans, i.e, from 20.10.2015 comes out to be 20.10.2019.
37. Further, with regard to the first issue that *"Whether the cancellation made by the respondent on 17.08.2022 is valid or not?"* Authority is of the view that respondent cancelled the unit of the complainants through a cancellation letter dated 17.08.2022, stating that *"you have not paid due amounts on the time schedule as per agreement. Even after repeated reminders, both verbal and written, you failed to make due payments till date. As per Haryana*



Government's Affordable Housing Policy's terms and conditions and various clauses thereof, your flat stands cancelled.kindly deposit all of the original documents to our office to process your refund. Even complainants in their pleadings have averred about the receipt of such cancellation letter. However, on the other hand, respondent failed to proactively approach the complainant. Firstly, respondent has failed to handover or even make an offer of possession to the complainants. Further, he failed to obtain occupancy certificate from the competent department till date. Respondent issued various demand letters in the name of complainants for paying the balance amount. Thereafter, the respondent issued letter for cancellation/termination dated 17.08.2022 to the complainants but respondent did not pursue said cancellation and failed to refund the amount paid by the complainants. Respondents should have acted in a bonafide manner and returned the amount paid by the complainant as per the provision of the ibid policy. No communication has been placed on record made between the parties since 2022 till the filing of present complaint to establish further correspondence. After sending the letter of termination, respondent should have refunded the total amount paid by the complainants. Rather, the respondents also chose not to act upon the allotment of the complainants and further retained the amount paid by the complainants for more than 14 years. Therefore, Authority deems



it appropriate to cancel the said cancellation letter and direct the respondent to restore the allotment of flat to the complainants, execute BBA and hand over the possession of the unit to the complainants after obtaining the necessary occupancy certificate from the competent Authority. Respondent is further directed to ensure that the complainants are provided with all necessary documents and amenities as per builder buyer agreement.

38. Furthermore, respondent has miserably failed to offer possession of booked unit to the complainants till date. The fact remains the same that complainants are insisting on possession of booked unit only and do not want to exist from the project. It is the respondent who has failed to hand over the possession of booked unit till date. Further, complainants have sought delay interest w.e.f. 20.10.2019 in both the complaints i.e., after expiry of 4 years date of sanction of the building, i.e, 20.10.2015, (as ascertained in para 37 of the order)
39. In the present complaint, the complainants intend to continue with the project and are seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under :-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the



handing over of the possession, at such rate as may be prescribed".

40. Per contra respondent has failed to put forth any valid reason/ground for not offering the possession of the booked unit. Complainants however are interested in getting the possession of the booked unit. They do not wish to withdraw from the project. Even today respondent during his arguments has averred that no third party rights have been created on the booked unit of the complainants. Therefore, it is clear that the unit has not been allotted to any third party by the respondent and the unit is vacant and available for the complainants to take possession. In such circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainants till date nor there is any available information with regard to the occupation certificate of the project in question. Hence, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date i.e. 20.10.2019 till the date on which a legally valid offer will be made to them after obtaining



occupation certificate. 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;

41. 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. 08.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.95%.

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]

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”.

42. Firstly, in Complaint no. 505 of 2023, Authority has calculated the interest on total paid amount i.e, ₹11,00,000/- from the deemed date of possession i.e., 20.10.2019 till the date of this order, i.e, 08.07.2024 at the rate of 10.95% till, and said amount works out to ₹4,02,240/- as per detail given in the table below:

A. IN COMPLAINT NO. 505 OF 2023

Sr. No.	Principal Amount	Deemed date of possession (20.10.2019) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.07.2024
1.	₹1,00,000/-	20.10.2019	₹ 51,720/-
	₹1,00,000/-	22.10.2019	₹ 51,660/-
	₹2,00,000/-	18.03.2020	₹ 94,440/-
	₹2,00,000/-	04.05.2021	₹ 69,720/-
	₹3,00,000/-	27.10.2021	₹ 88,740/-
	₹2,00,000/-	04.06.2022	₹ 45,960/-
	Total= ₹11,00,000/-		Total= ₹4,02,240/-
2.	Monthly interest		₹10,230/-

Thus, total amount payable on the part of respondent is ₹11,00,000/- (principal amount) + ₹4,02,240/- = **Total amounting to ₹15,02,240/-**



43. Accordingly, in complaint no. 505 of 2023, the respondent is liable to pay the upfront delay interest of ₹4,02,240/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹11,00,000/- monthly interest of ₹10,230/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

44. Secondly, in complaint no. 515 of 2023, Authority has calculated the interest on total paid amount i.e, ₹9,50,000/- from the deemed date of possession i.e., 20.10.2019 till the date of this order, i.e, 08.07.2024 at the rate of 10.95% till, and said amount works out to ₹3,67,770/- as per detail given in the table below:

B. IN COMPLAINT NO. 515 OF 2023

Sr. No.	Principal Amount	Deemed date of possession (20.10.2019) or date of payment whichever is later	Interest Accrued till the date of order i.e., 08.07.2024
1.	₹1,00,000/-	20.10.2019	₹ 51,720/-
	₹1,00,000/-	22.10.2019	₹ 51,660/-
	₹2,00,000/-	18.03.2020	₹ 94,440/-
	₹2,00,000/-	04.05.2021	₹69,720/-

	₹3,00,000/-	27.10.2021	₹88,740/-
	₹50,000/-	04.06.2022	₹11,490/-
	Total= ₹9,50,000/-		Total= ₹3,67,770/-
2.	Monthly interest		₹8,835/-

Thus, total amount payable on the part of respondent is ₹9,50,000/- (principal amount) + ₹3,67,770/- = **Total amounting to ₹13,17,770/-**

45. Accordingly, the respondent is liable to pay the upfront delay interest of **₹3,67,770/-** to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹9,50,000/- monthly interest of **₹8,835/-** shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.
46. The complainants are seeking compensation of ₹11,000/- for legal costs towards the legal notice and a sum of ₹1,00,000/- as litigation expenses. 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 & 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

47. Hence, the Authority hereby passes this order and issues 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:

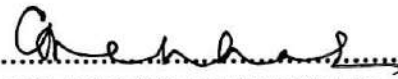
- (i) Respondent is directed to withdraw the cancellation letter issued to the complainants on 17.08.2022.
- (ii) Respondent is further directed to restore the allotment, execute Builder Buyer Agreement in terms of the Affordable Housing Policy 2013 and RERA Act, 2016 and Rules and Regulations framed thereunder and to pay upfront delay interest of ₹4,02,240/- in complaint no. 505 of 2023 and ₹3,67,770/- in complaint no. 515 of 2023 to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of



₹11,00,000/- monthly interest of ₹10,230/- in complaint no. 505 of 2023 and on entire amount of ₹9,50,000/- monthly interest of ₹8,835/- in complaint no. 515 of 2023 shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation certificate.

- (iii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of valid possession is offered to them.
- (iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.95% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees on the amount deposited by the complainants.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]