



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	461 of 2023
Date of filing:	13.03.2023
First date of hearing:	10.05.2023
Date of decision:	15.11.2023

Nidhi Bansal

D/o Shri Ravi Bansal

House no. 32-33, Pocket B-4, Krishna Enclave,

UGF, Sector-17, Rohini, Delhi-110089

.....COMPLAINANT

Versus

Haryana State Industrial & Infrastructure Development Corporation Ltd

C-13-14, Sector-6, Panchkula-134109

.....RESPONDENT

CORAM: Nadim Akhtar
Dr. Geeta Rathee Singh

Member
Member

Present: - Mr. Ravi Bansal, authorised representative of Ms. Nidhi Bansal,
through VC.
Mr. Tarun Gupta, Id counsel for respondent.

ORDER (NADIM AKHTAR- MEMBER)

Present complaint has been filed on 13.03.2023 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA Act, 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

The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of handing over of the possession, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Industrial Worker Housing Unit
2.	Location of project	Industrial Estate, Phase-V, Kundli
3.	Name of the promoter	HSIIDC
4.	RERA registered/not registered	Unregistered
5.	Unit no. allotted	B-2-305 and B-2-306
6.	Unit area	28.01 sq.mtr (approx.)
7.	Date of allotment letter	07.06.2013
8.	Possession clause in allotment letter	Clause 7 " <i>The possession of the residential units will be offered on completion of the</i>



		<i>construction works, with all attendant facilities."</i>
9.	Due date of offer of possession	Not mentioned
10.	Tentative price of unit	₹7,50,000/- per unit
11.	Amount paid by complainant	₹15,10,008/- for both units
12.	Offer of possession	No

B. FACTS OF THE COMPLAINT

- i. That HSIIDC invited application for allotment of Industrial Housing Unit, Industrial Area Kundli. The tentative price per unit was ₹7,50,000/-. That complainant applied for allotment of two single room unit and an amount of ₹1,60,000/- was paid by demand draft bearing no. 870184 dated 25th September 2012 drawn on Corporation Bank, New Delhi which includes processing fee of Rs10,000/-(Non Refundable) and Rs.1,50,000/- being 10% of tentative allotment price for two units being industrial worker of M/s Hi Tech Engineering Company having it's a registered office at Plot No. 390, Phase-IV, Sector-57, Kundli, Sonipat, Haryana.
- ii. That vide HSIIDC registered letter no HSIIDC.CNH.2013.2301 dated 22nd January 2013, complainant was informed that her application was found eligible and a letter of intent was issued to complainant with instructions to deposit a sum of ₹2,25,000/- by way of demand draft in favour HSIIDC. That a sum of ₹2,25,000/- was paid through Demand



Draft number 871113 dated 18th February 2013 drawn in favour of HSIIDC payable at Panchkula.

- iii. That two regular letters of allotment (RLA) for industrial worker housing units on freehold basis without offer of possession were issued to complainant vide HSIIDC letter no C&H..2013/332 dated 07th June 2013 and HSIIDC letter no C&H..2013/334 dated 07th June 2013 for allotment of two single room units bearing no B-02/305 and B- 02/306 respectively in Industrial Estate, Kundli (Sonipat). That acceptance to Regular Letter of Allotment was sent for unit no B-2-305 & B-2-306 separately by courier on dated 06 August 2013.
- iv. That first installment for the units were paid bearing demand draft nos. 491894 and 491895 dated 07th December 2013 against which receipts bearing number 10510 and 10508 were issued by Kundli office on 12th December 2013.
- v. That second installment was paid vide demand draft nos. 532980 and 532973 dated 18th June 2014 and 20th June 2014 for which receipt no 11330 & 11392 were issued.
- vi. That third installment was paid vide demand draft nos. 533232 & 533233, both dated 11th December 2014 against receipt nos. 11776 & 11777, both dated 15th December 2014 were issued.



- vii. That fourth installment was paid vide demand draft nos. 533424 & 533425 dated 27th May 2015 which were acknowledged by Kundli office vide receipt nos.12325 & 12326, both dated 4th June 2015.
- viii. That fifth installment was paid vide demand draft nos. 119522 and 119523, both dated 08th December 2015 against receipt bearing number 12841 and 12840, both dated 21st December 2015.
- ix. That sixth installment was paid vide demand draft nos. 119714 and 119715, both dated 03th May 2016 against receipt nos. 13092 dated 13th May 2016.
- x. That seventh and eighth installment was paid vide demand draft nos. 787821 and 787822, both dated 26th February 2018 against which HSIIDC issued the receipt nos.14016 and 14017, both dated 2nd April 2018.
- xi. That all the installments were paid as per the term of allotment, however possession of these units bearing number B-305 and B-306 were not handed over.
- xii. That request letter dated 17th October 2020 was sent by speed post to HSIIDC Kundli office and also to head office Panchkula requesting for handing over the possession of these Units.
- xiii. That on 1st July 2021, complainant visited office of HSIIDC Kundli (Sonipat) and submitted a letter requesting possession of flats in Worker



Housing, Kundli, Flat No - B - 2/305 & B - 2/306, which was acknowledge by HSIIDC vide receipt number 410 dated 01 July 2021.

- xiv. That, complainant in its letter dated 27-09-2021 requested HSIIDC, either to handover the possession of two single room units bearing no - B - 2/305 and B - 2/306 respectively in Industrial Estate, Kundli (Sonepat) or refund the entire amount paid along with interest @ 18% per annum.
- xv. That, due to urgency and acute need of money, complainant applied for refund of the eligible amount vide request dated 20-06-2022.
- xvi. That, amounts of Rs.6,16,266/- and Rs.6,17,610/- dated 28-07-2022 were credited in complainant bank account being operated with the Punjab National Bank, Sector-18, Rohini, Delhi Branch. That, HSIIDC vide letter no. HSIIDC:C&H:2022:SP.5605, dated 17-08-2022 intimated about the above refund.
- xvii. That, HSIIDC has not handed it over the possession of aforesaid unit in spite of payment of all installment in time rather they preferred to deduct the amount.
- xviii. That, all the declaration/papers were forcibly signed by complainant and also mailed to the official mail of HSIIDC to their Estate office Kundli as well as to their Head office, Panchkula keeping in view the urgency of need of money.



- xix. That HSIIDC paid me only Rs.12,33,876/- against total payment of Rs.15,10,008/- made in span of around 6 years starting from September 2012 to February 2018. That, HSIIDC had deducted Rs.2,76,132/- out of earnest money and installment paid from time to time.

C. RELIEF SOUGHT

Complainant sought following reliefs :

1. To pass an order directing the respondent to refund the difference from the principal amount amounting to ₹2,76,132/- which was paid lesser by the respondent from total paid amount of ₹15,10,008/-.
2. To pass an order directing the respondent to pay an amount of ₹20,14,694/- as interest @18% per annum on the amount of installement paid time to time.
3. To pass any such order that this Hon'ble Bench may deem fit in interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

- i. That the present complaint is not maintainable in present form nor the complainant has got any locus-standi to file the same and hence the complaint is liable to be dismissed.
- ii. That this Hon'ble Authority does not have the jurisdiction to entertain and try the present complaint as complainant has already surrendered the plot and the payment has also been received by the complainant before filing



of the present complaint. There is no relationship between the complainant and the respondent after the refund made by the respondent. The complaint before this Hon'ble Authority would be maintainable if there is any violation or contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 or the Rules and Regulations made thereunder against any promoter, allottee or Real Estate agent. Admittedly in the present case the relation between the complainant and the respondent ceased to exist after the surrender of the unit by the complainant and refund made by the respondent. Thus the present complaint does not fall within the purview of the Real Estate (Regulation and Development) Act, 2016 or the Rules and Regulations made thereunder. The complaint is thus liable to be dismissed on this short ground alone.

- iii. That the complainant is estopped to file the present complaint by its own acts and conducts.
- iv. That as per clause 7 of the regular letter of allotment dated 07.06.2013, the time was never the essence of the agreement. The respondent has never stipulated any time for providing the possessions of the industrial worker housing unit. The regular letter of allotment and the terms and conditions contained therein were duly accepted by the complainant vide acceptance dated 06.08.2013.



- v. Thus the present complaint seeking interest is baseless and is liable to be dismissed. A copy of the regular letter of allotment dated 07.06.2013 is annexed as Annexure R-1.
- vi. That as per clause 17 of the regular letter of allotment dated 07.06.2013, the allotment is governed by the terms and conditions mentioned in the allotment letter and Estate Management Procedures (EMP) of HSIIDC as applicable time to time. The complainant opted to surrender the industrial worker housing unit. That in the 367th meeting held on 22.12.2020, HSIIDC Board decided to have uniform provisions for surrender/resumptions of plots across all types of industrial as well as commercial and housing properties. The provisions of EMP-2015 relating to surrender/resumption of plot were amended in the following manner:

- “(i) Upon surrender of plots, the payment deposited by the allottee towards the principal cost and enhanced cost of the plot/sites would be refunded, without any interest by the Corporation, after deducting 10% of the price of plot/sites. In addition to the above, the interest and delayed interest paid as well as unpaid interest till the date of submission of surrender request on online portal of the Corporation shall also be forfeited subject to maximum of 10% price of the plot or 50% of amount paid over & above 10% price of the plot, whichever less. Maintenance, water/sewer charges, in default, if any, shall also be deducted from the refundable amount.*
- (ii) In case the allottee who surrenders the plot, intend to put plot on auction through HSIIDC and share the premium, in such*



case the payment deposited by the allottee towards the principal cost and enhanced cost of the plot/sites would be refunded, without any interest by the Corporation, after deducting 12.5% of the price of plot/sites. In addition to the above, the interest and the delayed interest paid as well as unpaid interest till the date of submission of surrender request on online portal of the Corporation shall also be forfeited subject to maximum of 10% price of the plot or 50% of amount paid over & above 10% price of plot, whichever is less. Maintenance, water/sewer charges, in default, if any shall also be deducted from the refundable amount. The HSIIDC shall put the plot on auction and the allottee shall be entitled to receive 50% of the premium earned over and above the allotment price after deduction of unpaid interest/delayed interest, in addition to amount payable upon surrender as per rules.

(iii) In addition to the ground of resumption given under clause-6.2.a of EMP-2015, the plot/sheds allotted by the Corporation shall also be liable to resumption in the event of non-completion of project by the allottee within the stipulated period.

(iv) Upon resumption of plots, the payment deposited by the allottee towards the principal cost and enhanced cost of the plot/sites would be refunded, without any interest by the Corporation, after deducting 10% price of plot/sites. In addition to the above, the interest and the delayed interest paid as well as unpaid interest by the allottee on installments, if any, shall also be forfeited subject to maximum of 10% price of the plot or 50% of amount paid over & above 10% price of plot, whichever is less. Maintenance, water/sewer charges, in



default, if any, shall also be deducted from the refundable amount."

That the deduction has been made by HSIIDC as per the rules applicable at the time of surrender of the unit by the complainant. Thus the action of the respondent does not suffer from any illegality. A copy of the extract of the minutes of the 369th meeting held on 17.07.2021 alongwith agenda item no. 12 are annexed as Annexure R-2 collectively.

- vii. That it is admitted that two regular letters of allotment for Industrial Worker units were issued in the favour of the complainant. As per clause 7 of the regular letter of allotment, the possession of the residential unit was to be offered on completion of the construction works with all attendant facilities.
- viii. That as per the calculation, the complainant is in default of payment of Rs.31,765/- calculated upto 31.07.2021 on account of plot cost (each) upto 8th installment.
- ix. That the housing complex has been constructed but the agency failed to complete the work. As such a dispute has been raised with the agency as per the contract agreement. The agency was advised for joint measurement to get the balance work executed at the risk and cost of agency. The respondent is in process of finalizing the financial



evolution. It is for these reasons, the possession has not been offered to the complainant.

- x. That the possession has not been offered as certain amenities are yet to be completed as the agency who has undertaken the construction work, has failed to complete the work.
- xi. That the respondent had never given a time frame for handing over the possession to the complainant. As per the regular letter of allotment, the possession was to be offered on completion of the construction works with all attendant facilities.
- xii. The status of the complainant is not of "allottee" as on the date of filing of the complaint and as such the complainant cannot raise any grievance relating to the possession of the unit.
- xiii. It is denied that the officials of the respondents at Kundli as well as in the head office had threatened the complainant to sign the declaration forcibly to get the refund. As per the policy of the respondent only online surrender request would be considered. As such the complainant had applied for surrender of the unit through online mode and thus the question of getting any declaration signed forcibly by the officials of the respondent does not arise. The complainant has concocted a false story to mislead this Hon'ble Authority. The complaint is based upon false, frivolous and baseless grounds and is liable to be dismissed.

A handwritten signature in blue ink, appearing to be 'Jad', with a horizontal line underneath it.

E. REJOINDER SUBMITTED BY COMPLAINANT

- i. That applicant is an aggrieved person as per section -31 of RERA Act, 2016 by the act of the respondent where the respondent enjoyed hard earned money of the applicant for almost 09 years. After utilizing the money paid by the applicant as instalments of unit allotted under Industrial Worker Housing Unit, Kundli(Sonipat), has not paid the interest on money deposited nor handed over possession of the unit allotted under the scheme to the complainant.
- ii. That Hon'ble Authority has jurisdiction to entertain the present complaint. Notification no.1/92/2017-TCP dated 25.01.2018, provides that regulations shall apply to all matters falling within the jurisdiction of RERA, Panchkula notified by the State government.
- iii. That submissions of respondent under para (vi) have no meaning as all stated above applies on industrial plots and sheds. Respondent is trying to misguide the Authority.
- iv. That there was no such policy in the year 2013 when Regular Letter of Allotment was issued by the applicant in August 2013 for Worker Housing Unit. Policy quoted by respondent applies only on industrial plots and industrial sheds. Worker housing unit are not covered in that.
- v. That no calculation sheet is attached with reply submitted by respondent and no justification for deduction of amount claimed by applicant has been given.



- vi. That it is failure on part of respondent for not handing over of the possession. Complainant is not concerned with disputes between respondent and agency hired for construction work.
- vii. That complainant needs not to be an allottee at the time of filing of the complaint application before the Authority. The applicant must be an aggrieved person as per section-31 of RERA Act, 2016.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

Ld counsel for both the parties reiterated their submissions as mentioned in complaint and reply during the course of hearing.

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

After taking into consideration the facts and circumstances of the case and arguments put forth by both the parties, Authority observes as follows:

- i. Factual position of the case remains that complainant had booked two single room units in the project of respondent. Thereafter, respondent issued two regular allotment letters in favour of complainant w.r.t unit no.B-2-305 and B-2-306 in the year 2013. Complainant paid installments as and when demanded by the respondent. Till 02.04.2018, complainant paid total amount of ₹15,10,008/- for both units. Thereafter, complainant sent request letter dated 17.10.2020 for



handing over of possession. On 01.07.2021, complainant visited the office of respondent and requested for handing over of possession. Again complainant vide its letter dated 27.09.2021, requested respondent to either hand over possession or refund the paid amount. However, till the year 2021 respondent did not handed over the possession of both the units to the complainant. Being aggrieved for almost 9 years for not being handed over of possession and due to acute requirement of money, complainant applied for refund of already paid amount on 20.06.2022. In compliance of request of the complainant for refund, respondent refunded an amount of ₹6,16,266/- with respect of unit no. B-2-305 and ₹ 6,17,610/- with respect to unit no. B-2-306 via RTGS dated 28.07.2022. Now, the complainant has approached this Authority for refund of the difference from the principal amount amounting to ₹2,76,132/- which was paid lesser by the respondent from total paid amount of ₹15,10,008/- and interest on the amount of instalments paid from time to time. Main averment of the respondent is that Authority does not have jurisdiction to decide the present complaint as there is no violation or contravention of the provisions of RERA, Act 2016 or Rules as complainant has already surrendered the plot and refund has been received by the complainant before filing of the present complaint. That means, there exist no relationship between the



complainant and respondent after the refund being made by the respondent and accepted by the complainant.

- ii. Authority observes that from the year 2013 to 2021, there exist relationship of allottee and promoter between the complainant and respondent as allotment of units were made in favour of complainant vide allotment letter no. CNH2013/332 dated 07.06.2013 for unit no.B-2-305 and allotment letter no. CNH2013/334 dated 07.06.2013 for unit no.B-2-306. Till the year 2021, respondent did not handed over the possession of unit in favour of complainant, meaning thereby, respondent failed to fulfill its obligations. In this regard, reliance can be made to judgment dated 11.11.2021 passed by Hon'ble Supreme Court in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*. Relevant part is reproduced below for reference:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given



circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.”

“45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre existing contract and rights executed between the parties in the larger public interest.”

“53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it



negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection."

"54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act. Therefore, Authority has complete jurisdiction to adjudicate the matter.



iii. Herein, complainant is aggrieved by the fact that amount which is being refunded by the respondent is not acceptable, as respondent had refunded the amount wrongly by making unnecessary deductions and therefore, complainant comes within the definition of aggrieved person as per section 31 of RERA Act, 2016. Definition is reproduced for reference:

Section-31 Filing of complaints with the Authority or the adjudicating officer.

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.--For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].

In this regard, Authority observes that main issue involved in the matter is whether the refund made by the respondent on 28.07.2022 is as per terms and conditions of regular allotment letter or not? As per clause 1 of regular allotment letter dated 07.06.2013, it is mentioned that allotment shall be governed by the EMP-2011



instructions/ guidelines issued from time to time by the HSIIDC/respondent. That means, allotment of complainant is governed by EMP-2011 and refund is to be made in consonance with that EMP-2011. Further, as per clause 17 of regular allotment letter, allotment is governed by the terms and conditions mentioned in the allotment letter and Estate Management Procedures of HSIIDC as applicable from time to time and accordingly, respondent had refunded the above mentioned amount as per clause (i) of para no.2 of EMP-2015 which was decided in 367th meeting held on 22.12.2020. Herein the question arises that how can respondent refund an amount of ₹616266/- and ₹ 617610/- as per EMP-2015 whereas allotment was made way back in favour of complainant in year the 2013. In this regard, Authority observes that any policy or regulation cannot be applied retrospectively unless it is passed by the legislature or express terms in policy in this regard. Moreover, as per principles of law, i.e, *lex prospicit non respicit* : law looks forward not backward. Also, any law which deprives the party from its vested interest cannot be said to be justified. Reference can be made to judgement passed by **Hon'ble Supreme Court on 06.09.2021 in Civil Appeal no. 5815 of 2009 Assistant Excise Commissioner, Kottayam & ors. versus Esthappan Cherian & Anr.** Relevant para for reference:



14. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In Commissioner of Income Tax v Vatika Township this court, speaking through a Constitution Bench, observed as follows:

*“31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips vs. Eyre*[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

Therefore, Authority deems fit that policy of year 2015 further amended in 2021, applied by the respondent for refunding of amount to the complainant cannot be made applicable in case of allotment of the year 2013. The amount refunded by the respondent is not as per



terms and conditions of the policy in vogue and RERA Act, 2016 and therefore complainant is an aggrieved person as per section-31 of RERA, Act 2016.

- iv. Another averment raised by respondent is that as per clause 7 of regular allotment letter dated 07.06.2013, possession of the residential units will be offered on completion of the construction works with all attendant facilities. Meaning thereby, time was never essence of the agreement as respondent never stipulated particular period for providing the possession of the units. In this regard, Authority observes that in allotment letter, there is no specific time mentioned for deemed date of possession and respondent has left it open ended, by referring to completion of construction work which may take place in 3-4 years or 14 years or later. Also in absence of builder buyer agreement executed between the parties, law has already been settled by the Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr wherein it is observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, complainant was allotted flat on 07.06.2013 as per provisional allotment letter. Taking period of 3 years from the date of allotment, i.e, 07.06.2013, as a reasonable time to complete



development works in the project and handover possession to the allottee, the deemed date of possession comes to 07.06.2016. This shows that deemed date of possession has already expired way back in 2016 and till today respondent is not able to complete the project and offer possession to the complainant. The reason given by the respondent for not offering the possession is that certain amenities are yet to be completed as the agency who has undertaken the construction work has failed to complete the work. Undeniably, the agency was engaged as per the choice of respondent and the respondent was expected to supervise the work of agency and in case of necessity, was also expected to change the agency for the purpose of ensuring timely delivery. So, the averment put forth by respondent deserves rejection and the respondent cannot escape his own liability by shifting blame to contractor.

- v. Another averment raised by respondent that complainant defaulted in payment of ₹31,765/- calculated upto 31.07.2021 or account of plot cost upto 8th instalment, Authority observes that mere averment that complainant defaulted in making payment without any relevant proof of the same for causing delay in offering the possession is not sufficient to justify the delay caused.
- vi. Considering the circumstances and factual position of case Authority finds it a fit case for refund of paid amount. Further, Hon'ble



Supreme Court in the matter of “*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* ” in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

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

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



possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

- vii. 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;

- viii. 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”.

- ix. 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 respective dates, i.e., 28.07.2022 is 7.80% and 15.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% ,i.e., 9.80% and 10.75%.
- x. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund along with interest. Thus, respondent will be liable to pay the complainant, interest from date of payments till the date of refund, i.e., 28.07.2022. Further, as respondent had already refunded an amount of ₹1233876/- to the complainant on 28.07.2022, thus, respondent is liable to refund the balance amount, i.e., ₹2,76,132/- and interest w.r.t said amount from date of refund till date of order, i.e, 15.11.2023. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no.	Principal amount	Date of payments	Date of refund	Interest from date of payments till date of refund
1.	₹1,60,000/-	25.09.2012	28.07.2022	₹154394/-



2.	₹2,25,000/-	18.02.2013	28.07.2022	₹208297/-
3.	₹70313/-	12.12.2013	28.07.2022	₹59486/-
4.	₹70313/-	12.12.2013	28.07.2022	₹59486/-
5.	₹70313/-	24.06.2014	28.07.2022	₹55824/-
6.	₹70313/-	01.07.2014	28.07.2022	₹55692/-
7.	₹70313/-	15.12.2014	28.07.2022	₹52539/-
8.	₹70313/-	15.12.2014	28.07.2022	₹52539/-
9.	₹70313/-	04.06.2015	28.07.2022	₹49311/-
10.	₹70313/-	04.06.2015	28.07.2022	₹49311/-
11.	₹70313/-	21.12.2015	28.07.2022	₹45535/-
12.	₹70313/-	21.12.2015	28.07.2022	₹45535/-
13.	₹70313/-	13.05.2016	28.07.2022	₹42817/-
14.	₹70313/-	03.05.2016	28.07.2022	₹43005/-
15.	₹140626/-	02.04.2018	28.07.2022	₹59618/-
16.	₹140626/-	02.04.2018	28.07.2022	₹59618/-
	Total= ₹15,10,008/-			Total= ₹10,93,007/-

Sr.no	Balance principal amount (principal amount - refunded amount)	Date of refund	Date of order	Interest from date of refund till date of order
1.	₹2,76,132/- (₹15,10,008- ₹12,33,876/-)	28.07.2012	15.11.2023	₹38711/-

Total amount to be refunded to the complainant

$$= ₹1093007/- + ₹2,76,132/- + ₹38711/- = ₹14,07,850/-$$

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H. DIRECTIONS OF THE AUTHORITY

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 refund an amount of ₹14,07,850/- to the complainant as specified in the table provided in para (x) of this order. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the amount.
- (ii) Also, respondent is directed to deposit cost of ₹5000/- payable to the Authority as imposed vide order dated 29.08.2023.
- (iii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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


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


.....
NADIM AKHTAR
[MEMBER]