



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:

08.07.2024

Name of Builder	Jagran Developers Pvt. Ltd.
Name & Location of Project	Jindal Galleria, Jindal Global City, Sector 29, District Kurukshetra, Haryana.

Sr. No.	Complaint No(s).	Complainants
1.	3053 of 2022	Mr. Brij Mohan Goel S/o Sh. Misri Lal Goel R/o 1245, Sector-13, Urban Estate, Kurukshetra, HaryanaComplainant Versus M/s Jagran Developers Private Limited, i. Business Office- Global City, Kurukshetra. ii. Registered office- at DSM-648, 6 th Floor, DLF Towers, Shivaji Marg, Najafgarh Road, Moti Nagar, New Delhi-110015 through its Authorised Signatory.Respondent

Handwritten signature

2.	3054 of 2022	<p>Mr. Saurabh Goel S/o Sh.B.M. Goel (Brij Mohan Goel), R/o # 1245 Sector-13, Urban Estate, Kurukshetra, HaryanaComplainant</p> <p style="text-align: center;">Versus</p> <p>M/s Jagran Developers Private Limited, Registered office at DSM-648, 6th Floor, DLF Towers, Shivaji Marg, Najafgarh Road, Moti Nagar, New Delhi-110015 through its Authorised Signatory.Respondent</p>
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CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present:- Adv. Sanjeev Gupta, Counsel for the complainants (in both complaints)
Adv. Drupad Sangwan, Counsel for the respondent through VC (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., "Jindal Galleria, Jindal Global City situated at Sector 29, District Kurukshetra, 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. Complaint no. 3053 of 2022 titled "Mr. Brij Mohan Goel versus M/s Jagran Developers Private Limited" 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	Jindal Galleria, Jindal Global City, Sector 29, District Kurukshetra, Haryana.
2.	Nature of the Project	Commercial Complex
3.	Name of the Promoter	Jagran Developers Pvt. Ltd.
4.	RERA registered/not registered	Registered vide registration no. 304 of 2017 dated 16.10.2017

4. Further the details of sale consideration, the amount paid by the complainants and proposed date of handing over of the possession have been given in following table:



Sr. No	COMPLAINT NO.	Property No. and area	DATE OF AGREEMENT	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERATION (IN RS.)	TOTAL AMOUNT PAID BY THE COMPLAINANTS AS PER RECEIPTS (IN RS.)
1.	3053 of 2022	Shop no. 4, Upper Ground floor, Super area- 34.29 sq. meter or (369.11 sq. ft.)	Shop/Office Buyer Agreement- 06.02.2014	06.02.2017 (36 months from the date of signing of this agreement i.e, 06.02.2014	₹17,64,346/-	₹17,23,231/- (receipts attached)
2.	3054 of 2022	Shop No.-3, Upper Ground floor, Super area- 34.29 sq. meter (369.11 sq. ft.)	Shop/Office Buyer Agreement- 07.04.2014	07.04.2017 (36 months from the date of signing of this agreement i.e, 07.04.2014	₹16,93,267/-	₹16,53,720/- (receipts attached)

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

5. That in June, 2011 complainant booked a shop in the project namely; Jindal's Galleria, Jindal Global City, situated at Sector-29, Kurukshetra, Haryana



being developed by the respondent. For the purpose of booking of the said unit, complainant paid an amount of ₹1,10,000/- to the respondent vide cheque dated 18.06.2011. That before booking of said shop, it was assured by the respondent that it has already received all the approvals for the development of the project.

6. That on 14.07.2011, the respondent confirmed the allotment of Shop No. 4 on the Upper Ground Floor, measuring approximately 297.24 sq. ft., and demanded an additional sum of ₹90,087/-. The complainant paid this amount on 15.07.2011, and subsequently a receipt was issued on 19.07.2011. A copy of demand cum confirmation of allotment letter dated 14.07.2011 is annexed as "Annexure C-2" and copy of receipt dated 19.07.2011 is annexed as "Annexure C-3".
7. That vide letter dated 26.04.2013, respondent informed the complainant that the project would now be developed by M/s Jagran Developers Pvt. Ltd., and all further correspondence should be directed to them. On 27.04.2013, the respondent confirmed the booking and acknowledged the total payment made by the complainant up to that date, amounting to ₹1,95,064/- (excluding taxes). Copies of letters dated 26.04.2013 and 27.04.2013 are annexed as "Annexure C-4 and C-5".



8. That on 30.11.2013, the respondent informed the complainant that the building plans have been approved and construction has commenced. At the time of booking, the respondent had claimed that approvals were already in place. Along with this letter, the respondent sent a buyer agreement and payment plan. The total sale consideration for the unit is ₹17,64,346/-, which included the basic cost, EDC & IDC, and IFMS charges. The respondent further demanded a payment of ₹2,54,915/-, which was paid by the complainant on 21.12.2013. Subsequent demands for payments were made by the respondent between the period of 2014 and 2017, which the complainant duly fulfilled, resulting in a total payment of ₹17,23,231/-. A copy of letters dated 30.11.2013 is annexed as "Annexure C-6" colly.
9. That the respondent by its letter dated 24.03.2014 informed and supplied the executed copy of the Shop/Office buyer agreement dated 06.02.2014 to the complainant. According to Clause 27(a) of the Shop/Office buyer agreement, the respondent was obligated to hand over possession within 36 months from the date of signing the agreement, with a grace period of six (6) months. Thus, respondent was bound to handover the possession of the unit on or before 06.08.2017. A copy of letter dated 24.03.2014 and Shop/Office buyer agreement dated 06.08.2014 are annexed as "Annexure C-10 and C-11" respectively.



10. That despite multiple assurances from the respondent, the possession of the unit has not been handed over to the complainant, who has made all the payments on time. Till date the complainant has paid an amount of ₹17,23,231/- against the total sale consideration to the respondent.
11. Also, the respondent had assured at the time of booking that it has already obtained all the approvals. That it is relevant to mention here that the complainant recently discovered that the project is not even registered under HRERA. The respondent has indulged into unfair trade practice by misrepresenting the complainant about the approvals and sanctions and further by not executing the agreement when it collected the booking amount in the year 2011.
12. That till date the respondent has failed to deliver the possession of the said unit which was supposed to be handed over by 06.08.2017. The complainant many times visited the office of respondent to enquire about the exact period within which the possession of the said unit would be handed over, but the respondent kept on assuring the complainant that the possession would be handed over very soon. However, till date the respondent has failed to offer the possession of the unit to the complainant.



13. The complainant had previously filed a complaint bearing no. 1671 of 2019, which was dismissed by the Authority for non-prosecution vide its order dated 19.07.2022, with the liberty to file a fresh complaint.
14. Given the respondent failure to deliver the possession within the agreed timeframe and the considerable delay beyond the committed date, complainant now wishes to withdraw from the said project. The complainant, therefore, seeks a refund of paid amount of ₹17,23,231/- along with interest as prescribed under Rule 15 of HRERA Rules, 2017.

C. RELIEFS SOUGHT

15. In view of the facts mentioned in complaint book, the complainant prays for following:
 - i. To direct the respondent to refund the amount of Rs.17,23,231/- along with interest at the rate prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the respective dates of payments till its realization, since under Section 18 of Real Estate (Regulation and Development) Act, 2016 the complainant wishes to withdraw from the project, since till date, the respondent has failed to offer the possession of the said unit.



- ii.* To direct the respondent to pay Rs. 2,00,000/- towards the litigation expenses;
- iii.* To pass any other order or direction as deemed fit and proper in the peculiar facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

16. Respondent by way of filing reply has challenged the maintainability of the captioned complaint on following grounds:

- i.* Firstly, that doctrine of *res judicata* under section 11 of C.P.C applies as the complainant has previously filed complaint no. 1671 of 2019 which was subsequently dismissed for non prosecution vide order dated 19.07.2022 passed by this Hon'ble Authority.
- ii.* Secondly, that this Hon'ble Authority doesn't have jurisdiction to entertain the present complaint, as it has been specifically mentioned/stated in clause 55 of the agreement that all the disputes shall be referred to arbitration being conducted by sole arbitrator.
- iii.* Thirdly, respondent has objected that complaint cannot be adjudicated by the Hon'ble Authority and should have been filed before the appropriate Authority which in the present case would be Hon'ble Adjudicating Officer as the complainant is also demanding compensation in the present complaint. That the reliefs pertaining to litigation costs are



required to be filed only before the Adjudicating Officer under section 31.

iv. Lastly, respondent has raised an objection that complainant has concealed the material facts from this Hon'ble Authority that as per the directions of the Hon'ble Authority and as per the RERA Rules interest @10.20% to the tune of ₹3,71,911/- was also adjusted in the account of the complainant. However, the total amount of ₹1,80,536/- was payable by the complainant and after adjustment of amount of compensation a refund of ₹1,91,375/- was shown as payable to the complainant. A detailed statement of account of payable and receivable was filed before this Hon'ble Authority in the previous complaint. The complainant has intentionally concealed these facts from this Hon'ble Authority. Hence the complaint is liable to be dismissed.

17. Further, respondent avers that the complainant entered into a Shop/Office Agreement on 06.02.2014 and was allotted a Shop No. UG 4, Upper Ground Floor, with a super area of 34.29 sq. meters (369.11 sq. ft.) in the respondent's project namely; Galleria, Kurukshetra Global City, Kurukshetra. The respondent promoter was obligated to hand over possession of the unit, subject to full payment of the sale consideration and force majeure circumstances.



18. The respondent commenced construction, but the complainant defaulted on instalment payments despite repeated requests. The respondent even waived off interest amounting to ₹29,403/- as a goodwill gesture. Following an order dated 07.01.2020 by the Haryana Real Estate Regulatory Authority, Panchkula, respondent was directed to submit an account statement of receivables and payables and to offer possession of the unit to the complainant. Accordingly, possession was offered to the complainant on 20.01.2020, and a demand letter was issued on 21.01.2020 for instalment amount of ₹1,34,806/- along with maintenance charges of ₹45,730/- totalling to ₹1,80,536/- which was payable by the complainant. In the demand letter, as per the direction of the Hon'ble Authority, the compensation of ₹3,71,911/- as per RERA rules has been granted to the complainant.
19. Finally, the respondent highlights that the business unit is complete, an occupation certificate has been granted to the respondent on 17.03.2020, and possession has been offered to the complainant on 20.01.2020. Any request for a refund at this stage would jeopardize the entire project, which would be unreasonable and unjust.
20. The respondent has issued a letter for maintenance charges to the complainant concerning the allotted shop, as per the Buyer's Agreement dated 06.02.2014. This agreement included a stipulation for the provision of maintenance



services by the respondent or its nominated maintenance agency, with the complainant obligated to pay these charges. The respondent appointed M/s Metro Facility Management Pvt. Ltd. as the maintenance agency. As per the agreement, the complainant is liable to pay ₹1,02,899/- in maintenance charges along with ₹58,633/- in interest. Additionally, due to the complainant's default in taking possession, holding charges of ₹63,532/- are also payable. Thus, the total outstanding amount against the complainant is ₹2,25,064/-. The true copy of Latest Maintenance Statement and Statement for holding charges is annexed as "Annexure R-6."

21. Furthermore, Buyer's Agreement clearly specified that buyer's agreement with its annexes supersedes any and all understandings, any other agreement, correspondence or arrangement in so far as they are inconsistent with the Buyer's Agreement, if any, between the parties. The relevant clause of the Buyer's Agreement is clause 42. It is stated in the agreement that any reliance of the Complainant on the application and the contents stated thereto with respect to any averments on part of the respondent including date of delivery is not enforceable and bad in view of the aforesaid clear understanding agreed in the Buyer's Agreement.
22. Further, the Buyer's Agreement clearly specified a time period of 42 months towards the delivery of the business unit which is subject to timely payment



and Force Majeure conditions along with other circumstances as referred to in the Buyer's Agreement. The complainant has not even considered the settled position of law that the terms and conditions agreed to between the parties are binding in nature. The complainant agreed to the terms and conditions of the Buyer's Agreement dated 06.02.2014, including the sale consideration and the time schedule for delivery. However, the complainant has filed the current complaint with the intent to extract interest on part payments made to the respondent, using this as leverage to blackmail and extract additional funds, contrary to the agreement's terms.

23. As on 27.12.2022, the respondent has received ₹17,23,231/- from the complainant, which has been fully invested in the development of the complainant's business unit. The construction of the project, including the unit of the complainant, has been completed. All necessary internal works and infrastructure, including roads, sewer lines, water supply, and various amenities, have been finished. The Occupation Certificate for the entire Galleria project, including the complainant's unit, has been granted. Also, it has been reiterated that the complainant has concealed the fact that he is in default and has not paid the demanded charges as agreed upon in the Buyer's Agreement. The true copy of the Occupation Certificate has been annexed as "Annexure R-7".



E. REJOINDER FILED BY THE COMPLAINANT ON 27.05.2024

24. Complainant has stated in his rejoinder that there has never been default on the part of the complainant in paying the instalments. All the demand letters and receipts are duly attached by the complainant. It is the respondent who indulged into unfair practices by mentioning in demand letters that interest @24% would be charged in case of any delay in paying the intstallements.
25. Further, so far as in complaint no. 1671 of 2019 filed by the complainant, there was no representation on his behalf. The complainant had not engaged any lawyer for pursuing the said complaint. The complainant being ignorant was not aware about the fact that he has to appear in every hearing before this Hon'ble Authority. Therefore, the complainant was not aware of any documents submitted by the respondent in the said earlier complaint. The said complaint was dismissed for non prosecution vide order dated 19.07.2022. A copy of final order dated 19.07.2022 is annexed as Annexure R-1. Moreover the stipulated date of possession as per the agreement was 06.08.2017. The complainant is well within his right to claim refund since the respondent has failed to deliver the possession within prescribed period of time.
26. Further, respondent offered possession of the unit in the year 2020 that too during the pendency of the earlier filed complaint. Therefore, complainant is well within his right to claim refund since the respondent has failed to make a



legally valid offer of possession within a prescribed time. Moreover, complainant is not liable to pay maintenance and holding charges or any interest thereupon, without being handed over of possession of the unit in question. Lastly, complainant requests the Authority to direct the respondent to refund his paid amount along with interest accrued thereupon.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

27. Learned counsel for complainant reiterated the basic facts of the case and stated that respondent has made a delay in offering possession of the unit to the complainant. Complainant booked the unit in question in the year 2011. After expiry of 2.5 years from the booking, respondent sent a letter of the building plan approval of the unit. Therefore, it can be concluded that respondent booked the unit in question without getting proper approval of building plan. Shop/ Office buyer agreement was executed between the parties on 06.02.2014, i.e, after 3 years from the booking of the unit. According to the clause 27 (a) respondent was obligated to handover the possession of the unit by 06.08.2017 (36 months from the date of signing of the agreement plus 6 months grace period). Respondent has made a considerable delay in handing over of possession. An earlier Complaint no. 1671 of 2019 was filed by the complainant against the respondent promoter;



however the same was dismissed by the Authority vide order dated 19.07.2022 for non prosecution, with a liberty given to the complainant to file fresh complaint.

28. Ld. counsel for complainant further stated that during the pendency of the earlier complaint no. 1671 of 2019, an offer of possession was made to the complainant on 20.01.2020 but the same was without occupation certificate thus, making the said offer of possession an invalid offer of possession. Respondent has been granted occupation certificate from the competent authority on 17.03.2020. He further concluded that complainant is seeking relief of refund along with interest from the Authority.
29. On the other hand, ld. counsel for respondent stated that earlier Complaint no. 1671 of 2019 was filed in the year 2019. Vide order dated 07.01.2020 passed by the Authority in Complaint no. 1671 of 2019, respondent applied for the grant of occupation certificate on 22.04.2019. However no objection was raised by the competent authority for the same. Therefore, the builder promoter can consider occupation certificate as “deemed occupation certificate” as has provided under clause 4.10 of sub clause 4 and sub clause 5 of Haryana Building Code, 2017. Therefore, keeping in view the deemed occupation certificate, Authority directed the respondent to offer possession to the complainant. Resultantly an offer of possession was made to the



complainant on 20.01.2020. Since, project in question is complete, occupation certificate has already been received from the competent Authority on 17.03.2020, and refund at this stage would lead to difficult circumstances for the respondent. Earlier when complainant no. 1671 of 2019 was filed, it was adjudicated along with bunch of 7 other complaints. Out of which, in 6 complaints, Authority directed the respondent to hand over possession to the complainant as Occupation certificate was received by the respondent. However, in two complaints including 1671 of 2019 was dismissed due to non prosecution.

G. ISSUES FOR ADJUDICATION

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

H. 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 complainant and the respondent, the Authority observes as under:

31. The Authority has gone through the rival contention and the documents placed on record. It is an admitted fact by both the parties that the complainant booked a shop no. 4 in the real estate project being developed by promoter namely, "Jagran Developers Pvt. Ltd." located at Sector 29,



Kurukshetra Haryana for total sale consideration of ₹17,64,346/. (Complainant in his pleadings and as per Annexure II of the schedule of payment annexed by the complainant in his complaint book has mentioned total sale consideration as ₹17,64,346/. However, as per Clause 2.2 (A) of buyer's agreement, total Sale price is ₹17,27,435/-) Complainant was allotted Shop No. 4 on upper ground floor, admeasuring 297.24 sq. Ft in project of respondent. Complainant had paid an amount of ₹17,23,231/- against total sale consideration. Shop/ Office Buyer Agreement was executed between the parties on 06.02.2014.

32. As per Clause 27 (a) of the Buyer's agreement, "*...the Developer proposes to handover the possession of the said premises within a period of thirty six months from the date of signing of this Agreement with a further grace period of six months.*" As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the Shop/office buyer agreement, i.e, immediately after completion of construction works within 36 months. Thus, the period of 36 months expired on 06.02.2017. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 6 months cannot be allowed to the promoter. Therefore, deemed date of possession for



the unit in question comes out to be 06.02.2017, i.e., 36 months from execution of the agreement (06.02.2014). In the present case, respondent was under an obligation to deliver the possession of the unit/floor by 06.02.2017. However, till date neither physical possession of the unit has been handed over nor any legally valid offer of possession after obtaining occupation certificate, has been made to the complainant, thus relief of refund of paid amount along with interest be granted to him.

33. On the other hand, respondent by way of filing reply has objected to the maintainability of the complaint on the grounds that:-

i. *Firstly, that doctrine of res judicata under section 11 of C.P.C applies as the complainant has previously filed complaint no. 1671 of 2019 which was subsequently dismissed for non prosecution vide order dated 19.07.2022 passed by this Hon'ble Authority. Relevant part of earlier order dated 19.07.2022 passed in Complaint no. 1671 of 2019 is reproduced below:*

"2. Now the fact that no one has appeared on behalf of complainant in any of last 6 hearings. It seems complainant is not interested in prosecuting the case. In these circumstances, Authority observes that complainant has failed to prosecute his case by not appearing in any of the last 6 hearings, therefore, this case is dismissed for on prosecution with a liberty to the complainant to file fresh complaint."

Authority is of the view that the earlier complaint no. 1671 of 2019 was dismissed by the Authority. However, it is pertinent to note that the dismissal



of the earlier complaint was accompanied by a specific liberty granted to the complainant, allowing him to file a fresh complaint. In exercise of this liberty, the complainant has filed the present (captioned) complaint. Accordingly, the present complaint is not barred by the principle of *res judicata*. The doctrine of *res judicata* applies only when a matter has been finally adjudicated on its merits by a competent court or authority. In the present case, since the earlier complaint was dismissed with liberty to file a fresh complaint, there was no adjudication on the merits of the matter. Therefore, the principle of *res judicata* does not apply, and the complainant is entitled to pursue the present complaint.

ii. *Secondly, that this Hon'ble Authority doesn't have jurisdiction to entertain the present complaint, as it has been specifically mentioned/stated in clause 55 of the agreement that all the disputes shall be refer to arbitration being conducted by sole arbitrator.*

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear.



Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

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

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-

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



shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

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

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

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017*** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC. As provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is



bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

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

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held *"there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in*



supersession of, the remedies available under the Arbitration & Conciliation Act.” Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

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

- iii. Thirdly, respondent has objected that complaint cannot be adjudicated by the Hon'ble Authority and should have been filed before the appropriate Authority which in the present case would be Hon'ble Adjudicating Officer as the complainant is also demanding compensation in the present complaint. That the reliefs pertaining to litigation costs are required to be filed only before the Adjudicating Officer under section 31.*



With regard to this issue, perusal of file reveals that complainant is seeking relief of refund of his paid amount along with interest and compensation of ₹2,00,000/- towards the litigation cost from the Authority as mentioned in clause 15 (i), (ii) of this order. Authority is of the view that with regard to the relief wherein, complainant is seeking compensation of ₹2,00,000/- towards the litigation expenses, 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses i.e, relief no. 2. However, Authority is well within its jurisdiction to adjudicate the relief of refund along with interest sought by the complainant in relief no. 1.

iv. Lastly, respondent has raised an objection that complainant has concealed the material facts from this Hon'ble Authority. It is submitted that as per the



directions of the Hon'ble Authority and as per the RERA Rules interest @10.20% to the tune of ₹3,71,911/- was also adjusted in the account of the complainant. However, the total amount of ₹1,80,536/- was payable by the complainant and after adjustment of amount of compensation a refund of ₹1,91,375/- was shown as payable to the complainant. A detailed statement of account of payable and receivable was filed before this Hon'ble Authority in the previous complaint. The complainant has intentionally concealed these facts from this Hon'ble Authority. Hence the complaint is liable to be dismissed.

With regard to the above objection, respondent has neither argued nor pressed upon the same during the arguments. Therefore, Authority deems fit not to adjudicate on the above said issue.

In view of all the points mentioned above, Authority concludes that captioned complaint is very well maintainable before the Authority.

34. Further, Authority observes that complainant had opted for a construction linked payment plan. Payments were supposed to be made as and when project moves ahead. Further, complainant has made more than 90% of the payment out of the total sale consideration till March 2017, whereas even after making timely payments, respondent has miserably failed to handover the possession of the unit to the complainant on time. As per the terms and



conditions of the agreement respondent was under an obligation to deliver the possession of the unit by 06.02.2017. However, no document/ evidence has been submitted by the respondent proving that a legally valid offer of possession was made to the complainant within a prescribed period of time. Further, respondent claims that an offer of possession was made to the complainant on 20.01.2020. However, an occupation certificate was granted to the respondent by the competent Authority on 17.03.2020. Meaning thereby, respondent has made a considerate delay of 3 years from the deemed date of possession to offer possession to the complainant, which was not even a legally valid offer of possession as it was not accompanied by occupation certificate. Respondent has also admitted in his reply that an amount of ₹17,23,231/- has been received by him from the complainant.

35. Lastly, fact remains that till date neither respondent has offered the possession of the unit on time after obtaining occupation certificate and nor has refunded the paid amount to the allottee. Now, the innocent allottee who had invested his hard earned money in the project with the hope to get a shop and who was to get possession of the unit by 06.02.2017 cannot be forced/ compelled to accept possession of the unit in the project even if respondent has completed the project now after delaying it for more than 3 years.



36. Further, Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors.*" 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 judgment 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.

37. In view of above findings and after considering above mentioned judgment passed by Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P*



& Ors.”, Authority finds it to be fit case for allowing refund along with interest in favour of complainant. As per Section 18 of Act, interest is defined as under:-

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;

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready references:

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



38. 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%.
39. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount 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 10.95% (8.95% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.95% from the date of payment till the date of this order which comes to **₹36,52,999/-** (₹17,23,231/- (principal amount) + ₹19,29,768/- (interest accrued till 08.07.2024) in Complaint no. 3053 of 2022 and **₹35,07,817/-** (₹16,53,720/- (principal amount) + ₹18,54,097/- (interest accrued till 08.07.2024) in Complaint no. 3054 of 2022. According to the receipts/statement of accounts provided by the complainant details of which are given in the table below –



i. In Complaint no. 3053 of 2022

S.No.	Principal Amount	Date of payment/ transfer	Interest Accrued till 08.07.2024
1.	₹1,10,000/-	28.06.2011	₹1,57,080/-
2.	₹90,087/-	19.07.2011	₹1,28,077/-
3.	₹2,54,915/-	23.12.2013	₹2,94,503/-
4.	₹2,06,002/-	21.04.2014	₹2,30,640/-
5.	₹1,67,474/-	09.06.2014	₹1,85,042/-
6.	₹1,67,474/-	08.08.2014	₹1,82,027/-
7.	₹1,67,474/-	06.10.2014	₹1,79,063/-
8.	₹1,67,474/-	01.12.2014	₹1,76,250/-
9.	₹1,67,474/-	20.01.2015	₹1,73,738/-
10.	₹1,23,433/-	10.03.2015	₹1,26,235/-
11.	₹84,134/-	30.06.2015	₹83,217/-
12.	₹17,290/-	09.03.2017	₹13,896/-
Total	₹17,23,231/-		₹19,29,768/-

Total amount which has to be refunded to the complainant in Complaint no. 3053 of 2022 comes out to be **₹36,52,999/-**.

ii. In Complaint no. 3054 of 2022


S.No.	Principal Amount	Date of payment/ transfer	Interest Accrued till 08.07.2024
1.	₹1,10,000/-	28.06.2011	₹1,57,080/-
2.	₹90,087/-	19.07.2011	₹1,28,077/-
3.	₹2,36,496/-	23.12.2013	₹2,73,224/-
4.	₹1,97,703/-	21.04.2014	₹2,21,348/-
5.	₹1,60,727/-	01.12.2014	₹1,69,149/-
6.	₹1,60,727/-	09.06.2014	₹1,77,587/-
7.	₹1,60,727/-	08.08.2014	₹1,74,694/-
8.	₹1,60,727/-	06.10.2014	₹1,71,849/-
9.	₹1,60,727/-	20.01.2015	₹1,66,738/-
10.	₹1,18,460/-	10.03.2015	₹1,21,149/-
11.	₹80,745/-	30.06.2015	₹79,865/-
12.	₹16,594/-	09.03.2017	₹13,337/-
Total	₹16,53,720/-		₹18,54,097/-

Total amount which has to be refunded to the complainant in Complaint no. 3054 of 2022 comes out to be **₹35,07,817/-**.

I. DIRECTIONS OF THE AUTHORITY

37. 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

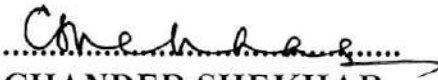


promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount along with interest of @ 10.95% to the complainant as specified in the tables provided above in Paras no. 39 (i) and (ii).

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

38. These complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]