

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed by the complainant on 20.02.2023 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	"Discovery Park", Sector 80, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Registered vide no. 297 of 2017 dated 16.10.2017
5.	Details of unit.	B-507, admeasuring 1120 sq. ft.
6.	Date of Allotment	28.02.2012



	letter	
7.	Date of floor buyer agreement with original allottees	21.01.2013
8.	Due date of possession 36 months	21.01.2016
9.	Possession clause in BBA (Clause 3.1)	<p><u>Clause 3.1</u> <i>"3.1 Subject to Force Majeure, as defined in Clause 10 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchase(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Flat Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall</i></p>



		<i>additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the project "Discovery".</i>
10.	Basic sale consideration	₹ 30,96,800/-
11.	Amount paid by complainant	₹ 16,66,192/- exclusive of timely payment discount.
12.	Offer of possession.	Not given till date.

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that original allottees Mr. Joji Mathew Abraham and Mr. Sachin Tyagi booked flat no. B-507 having an area of 1120 sq ft in respondent's project-"Discovery Park, Sector-80, Faridabad". Respondent issued an allotment letter dated 28.02.2012 for the aforesaid flat. Copy of allotment letter is attached as Annexure C-1.
4. Builder Buyer Agreement (BBA) was executed between the original allottees and respondent on 21.01.2013 and as per clause 3.1 of the BBA, possession was supposed to be delivered within 36 +6 months. Complainant entered into Agreement to Sell dated 18.01.2013 with



original allottees and made payment of Rs 7,61,118/- to them. Complainant further paid transfer fee and change of right charges to the respondent company and subsequently respondent transferred the flat in the name of complainant and issued letter of nomination dated 30.01.2013 endorsing flat buyer agreement and all existing payment receipts in the name of complainant. Letter of nomination dated 30.01.2013 is annexed as Annexure C-4.

5. That complainant has made payment of Rs 16,66,192/- against basic sale price of Rs 30,96,800/-. It is to mention here that respondent has granted three timely payment discount (TPD) bonuses and provided receipts for a higher amount totalling Rs 17,08,113/- as compared to actual amount paid totalling Rs 16,66,192/-.
6. That complainant started getting concerned with highly deficient construction progress and severe project delays as it became evident that construction completion and possession will take several more years beyond contractual possession date. Complainant made several visits to the project site and head office of respondent but nothing was being done on the project. Complainant even wrote several emails and letters to the respondent raising the concerns but the respondent was least bothered to pay heed to the genuine request. Copies of several emails sent by



complainant between June,2015 and January,2016 are annexed as Annexure R-6.

7. That respondent was bound to deliver possession in all respect of the said flat on or before 30.01.2016. Respondent failed to manage construction of the project which witnessed massive delays and several 3-12 months long stoppages in construction activities. Only roof slab of first two floors, out of the fourteen story tall building were partially casted till contractual date of possession of the flat as per flat buyer agreement.
8. That being aggrieved with the respondent, complainant filed a complaint bearing No. C-757/2016 before the State Consumer Disputes Redressal Commission, Delhi but the same was dismissed vide order dated 11.01.2018 by the Commission on the sole ground of maintainability with the finding that complainant is not a consumer as they are also having a separate plot in a different project of BPTP in their name. Copy of order dated 11.01.2018 is annexed as Annexure C-8.
9. That respondent made proposal of an alternate flat No. G-1202. Complainant visited proposed alternate flat and vide email dated 17.12.2021 accepted the offer of alternate flat given by respondent and requested them to send the settlement details for closing the matter by making payment of outstanding dues and taking delivery of possession.



Respondent company sent an email dated 03.01.2022 stating that approval on settlement is still in progress. On 20.08.2022, the complainant again went to the office of respondent and asked for the status of settlement details but respondent company backed out from its own earlier offer and offered another alternative offer for refund of paid amount plus delay interest as full and final settlement. Respondent made commitment to pay the amount in three post dated cheques of September, October, November of 2022. Complainant agreed to the same and informed the respondent vide email dated 23.08.2022.

10. That the respondent neither replied to the email dated 23.08.2022 nor handed over post dated cheques. Complainant was shocked to receive email dated 30.09.2022 wherein respondent backed out from all earlier commitments and attached back dated termination letter dated 04.02.2022. Alleged termination letter was neither forwarded via email nor speed post/any other formal communication. Complainant is running from pillar to post to get the flat even after making all payments as per demand letters and stage of construction. Complainant even agreed for refund with meagre amount of interest but the respondent rather than honouring their commitments fraudulently issued back dated termination letter which is totally against their own agreement to sell and is not binding upon rights of complainant.



11. In the light of the afore-said facts and circumstances, the complainant wishes to avail the remedy provided to her under section 18(1) of the Real Estate (Regulation and Development) Act, 2016 and withdraw from the project and the respondent is liable to refund the entire amount paid by the complainant till date along with interest.

C. RELIEFS SOUGHT

12. That the complainant seeks following reliefs and directions to the respondent:-

- i. Declare that the terms of the FBA are one-sided, prejudicial to the interest of the purchasers, arbitrary and biased and against the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017.
- ii. Set aside the termination letter dated 04.02.2022 (Annexure C-12) received on 30.09.2022 being illegal and arbitrary and against the provisions of the Act;
- iii. Direct the respondent to refund the entire money amounting to Rs. 16,66,192/- and also pay the up- to-date interest on the deposited amount @ SBI highest MCLR + 2% as provided under the Haryana RERA Rules



- iv. Any other relief which the Complainant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017.
13. During the arguments, learned counsel for the complainant reiterated his averments as mentioned above and further submitted that termination letter issued by respondent was not valid in the eyes of law and complainant wish to withdraw from the project in question and seeks refund of the paid amount as per provisions of the RERA, Act 2016 only.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 05.06.2023 pleading therein:

14. That the unit in question was booked by the original allottee on 21.01.2011 in project-Discovery Park, Sector-80, Faridabad by opting for construction linked plan. Vide allotment letter dated 19.11.2011, respondent allotted unit no. B-507 in the name of original allottees and on 21.01.2013, Builder Buyer Agreement was executed. Subsequently unit in question was purchased by the complainant on 30.01.2013. At the time of purchase, complainant was aware of status of construction of the project and without any demur requested the respondent to endorse the documents in her favour.



15. That the respondent in terms of clause 3.1 of the BBA subject to force majeure events, proposed to handover the possession of the unit within a period of 36 months from date of receipt of sanction of building plan or execution of the agreement, whichever is later, in addition to the further grace period of 180 days. Since the building plan was approved on 27.06.2012 and the BBA was executed on 21.01.2013, therefore , the due date of possession subject to force majeure arrives out to be 21.08.2016, i.e., 36 months from date of execution of BBA inclusive of grace period.
16. That the complainant has intentionally and deliberately concealed the receipt of demand letters dated 13.12.2016, 12.05.2017, 19.09.2017,05.02.2018 as well as the VAT demand letter dated 17.11.2016 whereby respondent had requested the complainant to make payment of outstanding due amount. But complainant did not make the payment of outstanding dues. Resultantly, constraining the respondent to cancel the allotment and terminate the BBA vide termination letter dated 04.02.2022. It has specifically been mentioned that the respondent had given inaugural discount of Rs 1,39,356/- at the time of booking. Further, complainant has availed a total timely payment discount to the tune of ₹ 30,549/-.
17. That agreements which were executed prior to implementation of RERA Act,2016 and Rules shall be binding upon the parties and cannot be re-



opened. Original allottee and respondent entered into BBA on 21.01.2013 which was later endorsed in favour of complainant on 30.01.2013. Both parties being signatory to endorsement dated 30.01.2013 towards the agreement dated 21.01.2013 are obliged to honour the terms of agreement.

18. That complainant has sought refund of the paid amount of Rs 16,66,192/- alongwith interest on the pretext that respondent had failed to complete the project within the promised timelines. However, possession timelines got diluted due to occurrence of force majeure circumstances which are beyond control of respondent. Such as, order passed by Hon'ble NGT prohibiting construction activity of all kinds in the entire NCR region, ban imposed by Environment Pollution (Prevention and Control) Authority in year 2018. Thereafter, Hon'ble Supreme Court on 04.11.2019 in '**M.C.Mehta vs Union of India**' banned all the construction activities. Further, the construction of the project had been marred by the COVID-19 pandemic whereby, the Government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondents which continued upto the year 2021. Due to aforesaid



unforeseeable circumstances and reasons beyond the control of the respondent, the construction got delayed.

19. That complainant was liable to make the payments as per demands raised by the respondent but has defaulted in making timely payments as agreed in terms of BBA. Respondent through various emails dated 17.06.2015, 19.06.2015, 02.02.2016, 01.08.2016, 30.08.2016, and 18.10.2016 sent the construction updates to the complainant and that there was no delay on the part of respondent in handing over of possession.
20. During the course of hearing, Mr. Hemant Saini, learned counsel for the respondent reiterated arguments as submitted in the written statement and further argued that in case paid amount is allowed to be refunded to the complainant then same be subject to forfeiture of earnest money as complainant herself defaulted in making payments towards the demand letters raised by respondent in consonance with payment schedule. He referred to final order dated 15.03.2023 passed in complaint no. 233/2023-Baljeet vs BPTP Parkland Pride Ltd in support of his plea. He further submitted that in case complainant wishes to withdraw from the project and seek refund of the paid amount, then the interest admissible to the complainant shall only be payable on the actual amount paid by the complainants which shall not be inclusive of the timely payment discount given by the respondent. The timely payment discount offered by the



respondent on payments made within the time frame is a genuine act of good will on the part of the respondent and the same should not be considered as a part of total payment made by the complainant. The interest admissible to the complainant should only be calculated on the actual paid amount excluding the timely payment discount as the same is not actual money which has been utilised by the respondent. Further, he argued that complainant intentionally chosen not to act upon termination notice dated 04.02.2022 till filing of this complaint, she remained silent for good number of 1.5 years and did not even bothered to make payment in terms of demand letters issued to her. So, in case , if refund is awarded to her then same would be subject to forfeiture of earnest money in terms of Builder Buyer's Agreement.

E. ISSUES FOR ADJUDICATION

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

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

F.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming



into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, has to decide disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint case No. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the



date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(c) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of



RERA Act. Or in case, if complainant wants to withdraw from the project then the respondent is obligated to refund the entire paid amount with interest.

F.II Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 3.1, works out to 21.01.2016, if we add grace period of 6 months then it comes out to 21.07.2016. Therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not? The obligation to deliver possession within a period of 36+6 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The



various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the month of July,2016, and the NGT order referred by the respondent pertains to the month of November, 2016. It is pertinent to mention that the respondent has failed to place on record any copy of the orders of the NGT justifying the applicability of the ban so imposed upon construction.

Therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

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

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing



over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

Moreover, the respondent has not provided the construction status of unit in question with latest photographs on record to support the fact that respondent has fulfilled its obligations and it is complainant who is shying away from her duties/obligations. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

22. As has been admitted between both the parties, upon booking, a unit bearing no. B-507, admeasuring 1120 sq. ft had been allotted to original allottee in the project of the respondent namely “Discovery Park” situated at Sector 80, Faridabad, Haryana vide allotment letter dated 28.02.2012. As per floor buyer agreement dated 21.01.2013 executed between original allottee and respondent, possession of the unit should have been delivered by 21.07.2016. However, even after a lapse of more than eight years respondent is not in position to deliver possession of the booked unit to the complainant. On account of inordinate delay in delivery of possession, complainant wish to withdraw from the project and seek refund of the paid amount along with interest.



23. In respect of plea raised by Id. Counsel for respondent that even if refund of paid amount is to be awarded then same be subject to forfeiture of earnest money in terms of agreement for the reason that complainant did not honour demand letters issued to her in consonance with the payment plan, i.e. construction linked plan. Earnest money as defined in agreement is as under:-

"1.18 Earnest money shall mean 20% of the total sales consideration on the super built up area of the floor."

It is the stand of respondent that complainant intentionally did not honour the validly issued demand letters dated 17.11.2016, 13.12.2016, 12.05.2017 and 19.09.2017 which were in terms of construction linked plan opted by complainant. Details of said plan is annexed as Annexure-D to builder buyer agreement. In order to examine this issue, firstly the payments made by complainant to the tune of Rs 16,66,692/- are evaluated in light of construction linked plan and demand letters issued by respondent.

Sr. No.	Date of payment	Amount in Rs	Reference to Annexure-D , on what stage said amount was paid.
1.	14.02.2012	2,38,241	Booking-7.5% of Basic sale price (BSP)
2.	30.04.2012	2,06,600	Within 75 days of booking-15% of BSP
3.	16.06.2012	2,89,600	On start of excavation-10% of BSP +20% allied charges
4.	21.01.2013	4,58,646	On start of upper basement-10% of BSP +20% allied charges
5.	20.08.2015	4,73,605	On casting of 1 st floor slab-10% of BSP +20% allied charges
	Total paid =	16,66,692/-	



Above referred table clearly shows that complainant duly paid amount till casting of 1st floor slab. There is no dispute on this point by both the parties. Next demand was to be raised on account of 'casting of 4th floor slab' which was raised on 13.12.2016 for an amount of Rs 4,91,341/-. Accordingly, next demand which was to be raised on account of 'casting of 8th floor slab' which was raised on 12.05.2017 for an amount of Rs 4,78,634/- plus previous due of Rs 4,91,341/- and next demand which was to be raised on 'casting of 12th floor' which was raised on 19.09.2017 for an amount of Rs 5,12,153/- plus previous due of Rs 9,69,976/-. Demands are raised by respondent in consonance with the schedule of payments agreed upon by both parties but fact herein is that deemed date of possession got expired on 21.07.2016 inclusive of grace period of 6 months. Complainant has duly honoured the demands till deemed date. As per agreement, the respondent was supposed to deliver possession latest upto 21.07.2016. Therefore, complainant was not liable to honor any demand raised after expiry of deemed date of possession, if allottees does not wish to continue with the project. Respondent's argument to the extent that demand was raised as per payment schedule is correct but the construction schedule got expired on 21.07.2016. Respondent was bound to raise all the demands before 21.07.2016 except the final demand which was to be paid at time of offer of possession. Construction activities were not carried out by respondent in terms of stipulated



timelines. Said act of respondent must have shattered the faith of complainant and complainant choose not to make further payments which is evident from record. To this, respondent issued termination notice on 04.02.2022 but respondent itself failed to act upon said notice by not refunding the paid amount to complainant. Infact paid amount still lies with respondent. So, if it is to be considered that complainant was liable to make payments within time then the respondent cannot expect a shadow look on its own liabilities regarding delivery of possession of the unit. In these circumstances, termination letter dated 04.02.2022 holds no validity in eyes of law. Complainant sincerely paid an amount of Rs 16 lakhs till year 2016, it is the act of respondent in not completing the construction works which made complainant to choose not to pay the installments raised further in upcoming years. Respondent already being at fault cannot be allowed to forfeit the earnest money. Therefore, the plea of respondent to forfeit the earnest money is devoid of merit and hence stands rejected.

24. The facts set out in the preceding paragraphs demonstrate that construction of the project had been delayed beyond a reasonable period of time thus causing delay and suffering to the complainant. Respondent has neither developed the project in question nor returned the amount paid by the complainant till date. Fact remains that respondent in its written statement has not specified as to when possession of booked unit will be offered to the



complainant. Complainant who has already waited for a long period of time, i.e., around 8 years and is not willing to wait further. In these circumstances, provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainant is seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within a reasonable period of time.

25. 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(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. 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."



26. Keeping in view the aforesaid discussion/observation, Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount from the dates of various payments made to respondent till realisation. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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;

27. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“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 (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”.

28. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 01.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.95%.

29. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e 01.07.2024 at the rate of 10.95% and said amount works out to ₹ 20,19,163/- as per details given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 01.07.2024
1.	2,38,241	14.02.2012	323198
2.	2,06,600	30.04.2012	275563
3.	2,89,600	16.06.2012	382185
4.	4,58,646	21.01.2013	575142
5.	14,208	15.10.2013	16679
6.	4,59,397	20.08.2015	446396
7.	Total=16,66,692/-		Total=20,19,163/-
8.	Total Payable to complainant	16,66,692+20,19,163=	36,85,855/-

30. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 16,66,692/- to the respondent in lieu of booked unit. On perusal of record reveals that said amount has been calculated/admitted by complainant after deducting timely payment discount provide by the respondent. Complainant itself has claimed amount exclusive of timely payment discount. Fact is that

timely payment discount is a discount given by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. This amount is made a part of the payment made towards sale consideration of the booked unit. This amount is never actually paid by the allottee nor received by the respondent. It is just an added benefit towards the booked unit. Captioned complaint pertains to refund of the paid amount as the complainant is not continuing with the project, therefore, this amount cannot be entertained as payment made towards sale consideration. Only the actual amount paid by the complainant is taken for consideration in order to award refund to the complainant. In this case, complainant itself claims refund of actual paid amount only. Therefore, the total paid amount for the purpose of refund and calculation of interest is being taken as ₹ 16,66,692/- .

H. DIRECTIONS OF THE AUTHORITY

31. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoters 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 paid amount of ₹16,66,692/- with interest of ₹ 20,19,163/-. It is further clarified



that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

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

32. **Disposed of** in view of the above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


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NADIM AKHTAR
[MEMBER]