# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| Complaint no.: | 1598 of 2022 |
| --- | --- |
| Date of filing: | 19.07.2022 |
| First date of hearing: | 27.09.2022 |
| Date of decision: | 11.07.2024 |

**Sagar Arora**

S/o Shri Deen Dayal,

#3/6, Ward no. 23, Near Sanjay Park,

Kishanpura, Panipat, 132103

.....COMPLAINANT

Versus

**M/s Aegis Value Homes Ltd**
Registered office at EF-10, Second
Floor, Inderpuri, Delhi – 110012

......RESPONDENT

| **CORAM:** | **Parneet Singh Sachdev** | **Chairman** |
| --- | --- | --- |
| | **Nadim Akhtar** | **Member** |
| | **Chander Shekhar** | **Member** |

**Present:** - Mr. Gandharv Malhotra, Counsel for the complainant through VC

Mr. Neeraj Goel & Mr. Tarun Ranga, Counsels for the respondent.

**ORDER (PARNEET S SACHDEV-CHAIRMAN)**

1. Present complaint has been filed on 19.07.2022 by complainant 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.

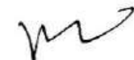
## A. UNIT AND PROJECT RELATED DETAILS

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

| S.No. | Particulars | Details |
|---|---|---|
| 1. | Name of the project | Smart Homes Karnal |
| 2. | Name of the promoter | M/s Aegis Value Homes Ltd |
| 3. | RERA registered/not registered | Registered |
| 4. | Unit no. | A4-606 |

| 5. | Unit area | 638.80 sq.ft |
|---|---|---|
| 6. | Date of Apartment Buyer Agreement | 18.08.2017 |
| 7. | Due date of offer of possession | 18.08.2021 (4 years from date of per agreement)<br>None of the parties have provided date of approval of building plans or grant of environmental clearance. |
| 8. | Possession clause in BBA | *Clause 3.1 "Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations and requirements in accordance with this agreement without any default, the Developer will endeavour to offer possession of the said Apartment to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"* |
| 9. | Total sale consideration | ₹19,89,320/- |
| 10. | Amount paid by complainant | ₹ 7,94,340/-<br>Complainant in its complaint initially stated paid amount as Rs 7,75,835/-, however, vide an application dated 15.04.2024 clarified that total paid amount is Rs 7,94,340/- |





| 11. | Offer of possession (fit-out) | No offer of possession given |
|---|---|---|

## B. FACTS OF THE COMPLAINT

3. That complainant booked the flat in the aforesaid project having a carpet area of around 638.80 sq ft for a total consideration of approximately ₹19,89,320/- out of which an amount of ₹ 7,94,340/- has been paid by the complainant. The copy of the agreement dated 18.08.2017 and the payment receipts depicting the same are annexed herewith as Annexure C-1 & C-4 respectively.

4. That the respondent-builder assured the complainant that the possession of the said flat would be delivered to the complainant within 4 years from the date of approval building plans or grant of environmental clearance whichever is later. However, respondent failed to hand over possession.

5. That as per agreement, the respondent did not completed the construction of the building at the site and whenever the complainant asked from the respondent officials at the site, they used to assure that the construction will be started shortly. The complainant also came to know that some other allottees also made complaints in this regard to the Police that the respondent misappropriated their huge amount. After coming to know of the aforesaid facts, the complainant also did not deposit further amount, as these was no construction work at the

site and it was also revealed that the respondent has not even purchased the land for construction and was also not having licence from the Govt. for the said project. When complainant did not receive any satisfactory reply from the side of the respondent, then he gave written police complaint to S.P. Office, Karnal.

6. That after lodging the Police complaint, the respondent assured the complainant that the amount deposited by him will be refunded along with interest shortly and the intimation of the same will be given to him but for a long time, the respondent did not refund any amount.

7. That the complainant served a legal notice dated 19.05.2022 through his counsel upon the respondent demanding therein refund of paid amount with 18% interest. But respondent did not respondent to it. In such like situation, RERA Act,2016 gives statutory right to allotee to withdraw from the project under section 18 of the Act.

## C. RELIEFS SOUGHT

8. Complainant sought following reliefs :

   a. The Respondent be directed to refund the entire amount to the complainant along with interest @ 24% per annum, calculated from the date of deposit till payment to the complainant.

   b. In the alternate, the Respondent be directed to deliver the possession immediately after payment of delay compensation as per the Real Estate (Regulation & Development) Act, 2016.

c. Any other relief which the Applicants are entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017.

d. Direct the respondent to pay compensation to the tune of Rs. 5,00,000/- harassment, on account of mental agony and

e. Direct the respondent to pay compensation to the tune of Rs.2,00,000/- on account of legal charges.

f. During the pendency of present complaint the respondent be directed to pay monthly interest on the amount deposited by the complainant with the respondent.

## D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. In short reply dated 29.05.2023 filed by the respondent, it is stated that project of respondent is near completion and the possession is likely to be delivered in next two months.

10. That the project of the respondent was delayed due to the pandemic Covid-19 prevalent in the country.

11. That the RERA Authority has given extension of time to the respondent for completion of work by July, 2023. Copy of the time extension granted by the Haryana Real Estate Regulatory Authority, Panchkula vide letter dated 09.06.2022 is annexed as Annexure R-A.

## E. WRITTEN SUBMISSONS ON BEHALF OF RESPONDENT FILED IN REGISTRY ON 10.07.2024

i. That the complainant has no cause of action against the respondent and the alleged cause of action was false and frivolous. That the respondent had neither caused any violation of the provisions of the act nor caused any breach of agreed obligations as per the agreement between the parties. Hence, the present complaint is liable to be dismissed.

ii. That the respondent submitted that the complainant cannot rely on the provisions of the RERA qua the agreements that were executed prior to the RERA Act coming into force. It is further submitted that for transactions entered into between the parties prior to RERA Act coming into force, the agreements entered into between the parties shall be binding on the parties and cannot be reopened.

iii. That the respondent submitted that the present complaint is barred by limitation as the complaint has been filed after expiry of 3 years. Hence, the present complaint may be dismissed on this ground alone. Further, as per Article 55 of the schedule of The Limitation Act which provides that the time period to file such complaints is 3 years and the time period to file such complaints begins to run from

the date of breach of agreement which is much prior in time as per complainant himself.

iv. That it is worthwhile to mention here that the construction of the project commenced in December 2015 and after that, construction of the Project was hampered due to force majeure situations beyond the control of the Respondent which are as follows: -

- Jat Reservation Agitation: The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of Respondent is situated for 8-10 days.
- Demonetization of Rs. 500 and Rs. 1000 currency notes: The Real Estate Industry is dependent on un- skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The Respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 50 and Rs. 10 with immediate effect. Resulting into an unprecedented chaos which cannot be wished away by putting blame on Respondent.
- GST Implications: It is pertinent to apprise to the Hon'ble Adjudicating Officer that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent Company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which

came into force after the effect of demonetisation in last quarter of 2016.

- Directions/Prohibition by NGT: It is noteworthy that on 09.11.2017, in Vardhaman Kaushik vs Union of India & Ors, the National Green Tribunal New Delhi observed The Tribunal had passed a detailed judgment in the case of Vardhman Kaushik on 10th November, 2016 and had clearly postulated the steps that were required to be taken on long term and short-term basis keeping in view the precautionary principle to ensure that the ill-effects and adverse impact of polluted ambient air quality in the previous year is not repeated in the year 2017.
- Construction Ban: It is noteworthy that in past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities ot curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- Covid-19 Pandemic: It is most humbly submitted that even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. It is most humbly

submitted that current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project.

## F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

Ld. counsel for complainant clarified that his client is interested in seeking refund of paid amount with interest only. Ld. Counsel for respondent reiterated its submissions as mentioned in reply along with written submissions.

## G. ISSUE FOR ADJUDICATION

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

## H. OBSERVATIONS AND DECISION OF AUTHORITY

12. Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that it is not a disputed fact that complainant booked a unit in the project of the respondent namely "Smart Homes Karnal" and builder buyer agreement was executed between the parties on 18.08.2017 for unit no.A-4-606, having area of 638.80 sq. ft. Against the basic sale price of ₹19,89,320/-, complainant has already paid a total amount of ₹7,94,340/-.

13. With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable when the complainant was allotted unit no. A4-606, in Smart Homes Karnal. It is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed 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:-

> *"52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*
>
> *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 on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

14. Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under

the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

15. As per clause 3.1 of agreement respondent/developer was under obligation to hand over possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced for reference:

> *"Clause 3.1 "Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations and requirements in accordance with this agreement without any default, the Developer will endeavour to offer possession of the said Apartment to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"*

Fact remains that both parties in their pleadings have not disclosed the date of approval of building plan or grant of environment clearance. Therefore, taking 4 years from date of building buyer agreement, the deemed date of possession works out to 18.08.2021.

16. It is the stand of respondent that force majeure conditions like-Jat Agitation of February 2016, Demonization in November 2016, GST Act, 2017, Prohibitions by NGT in year 2017 and 2019 and COVID-

19 Pandemic affected the project completion. The due date of possession in the present case as per clause 3 of agreement, works out to 18.08.2021, therefore, question arises for determination as to whether the said situation or circumstances were in fact beyond the control of the respondent or not.

17. Force majeure is a French expression which translates, literally, to "superior force". To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 need to be elucidated.In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to "those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control".Black's Law Dictionary defines Force Majeure as follows, "In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the event a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.Typically, such

clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

18. In India, it is often referred to as an "act of God". Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term "Force Majeure" is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872; particularly Sections 32 and 56. The law uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, "impossibility" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of Alopi Parshad and Sons Ltd vs Union of India, AIR 1960 SC 588 and the landmark Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC, the Supreme Court of India has categorically stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.

19. Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that "a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful." It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. The Supreme Court in Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e

- Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party's performance;
- The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties' intent;
- Force majeure events must be unforeseeable by both parties;
- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- ***Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.***

20. In the present case, due to the various decisions of the Authority, force majeure maybe accepted for the period of Covid, if that event adversely affected the work of the Respondent. However, with respect to other events, the respondent has miserably failed to even discharge his fundamental burden of proof as outlined by the Hon'ble Apex Court. On the contrary, the facts given by the Respondent are themselves contrary to his own arguments. For example, the construction ban was only for 5 days i.e 01.11.2019 to 05.11.2019. How did demonetisation or GST stop the construction work of the Respondent is not substantiated at all. How the events other than Covid prevented the Respondent from discharging his obligations has not been explained at all.

21. Moreover, the respondent has not given any specific details with regard to latest stage of construction of unit. Construction status with latest photographs has not been placed on record to support the fact that respondent has fulfilled its obligations and it is the complainant who is shying away from his duties/obligations. As of today, the construction is not going on at site from last 3-4 years as informed by complainant's counsel. No rebuttal to said statement has been made by respondent in oral/writing by respondent. Mere pleading of force majeure conditions without fulfilling its obligations, the respondent cannot be allowed to take benefit of his own wrong. 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. Respondent/ developer has filed a brief reply dated 29.05.2023, wherein respondent has not disputed allotment of the unit; signing of the builder buyer agreement dated 18.08.2017; deemed date of handing over of possession; against basic sale price of Rs. 19,89,320/- an amount of ₹7,94,340 /- paid by the complainant for the unit. Respondent had simply taken plea that project is near completion and the possession is likely to be delivered in next two months. Said time period of two months have already lapsed.

23. Factual position is that despite receipt of amount of ₹7,94,340 /-, out of which last payment was made on 08.02.2018, respondent failed to deliver possession within stipulated time, i.e., 18.08.2021 without any justified reasons. Therefore, present complaint was filed by the complainant in year 2022 alleging that no construction of project is going on at site. In order to adjudicate the complaint for refund, the status of the project is required to be ascertained, for this purpose. The Authority vide its interim orders dated 17.05.2022 appointed the CTP, HRERA, Panchkula as the local commissioner. CTP, HRERA, Panchkula submitted his report on 07.07.2022, wherein it is mentioned that the promoter M/s Aegis Value Home Ltd. is developing an "affordable group housing colony" namely; "Smart Homes Karnal" on

land measuring 5.653 acres in Sector 32-A, Karnal and the same is also registered with the Authority vide registration No.265 of 2017, now valid upto 23.07.2023. It is also mentioned in the report that the Director of the company, Shri Divey Sindhu Dhamija informed that the said project was being marketed/promoted in different names such as "Ananda Phase-I", "Aegis Scheme", "Aegis Smart Value Homes". Relevant portion of report as below:

> *Registration No. 265 of 2017 dated 09.10.2017 was granted to Aegis Value Homes Ltd. for developing the said colony. This Registration was valid for å period of 4 years from the date of grant of Environmental Clearance for the proposed Group Housing. Since the environment clearance was granted on 24.10.2017 therefore, the said registration shall be valid up to 23.10.2021.*
>
> *The promoter had applied for Extension of Registration. This Extension was granted up to 23.07.2023 including the nine months covid period.*
>
> *The project was proposed to be completed by 23.07.2022 (if 9 months relief for the COVID Period is also included).*
>
> *However, about 70% of the works have been executed at site and if the works are undertaken at a pace at which they were being undertaken at the time of site visit the project could be completed within one year.*

Report of local commissioner reveals that construction is going on and 70% works has been executed and if the works are undertaken at a pace at which they are being undertaken, project could be completed within one year. Accordingly, if one year is taken from the report of local commissioner, i.e., 07.07.2022, date comes 07.07.2023, and as per submission of respondent in reply dated 29.05.2023, the date of completion/handing over of unit comes to 29.07.2023. Both the dates have already expired and nothing concrete has been placed on record by respondent to prove that construction is actually at a pace that possession could be delivered within 2-3 months. Therefore, Authority cannot force the complainants to wait endlessly for possession of unit and deems fit to allow the relief of refund in favour of complainant.

24. 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. As 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 alongwith prescribed rate of interest.

25. 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;*

26. 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".*

27. 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. 11.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.95%.

28. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERD Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹7,94,340/- 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 along with interest calculated at the rate of 10.95% till the date of this order and total amount works out to ₹ 5,77,424/- as per detail given in the table below:

| Sr. No. | Principal Amount | Date of payment | Interest Accrued till 11.07.2024 |
|---|---|---|---|
| 1. | ₹55,578 | 01.06.2017 | 43317 |
| 2. | ₹39,649/- | 13.06.2017 | 30760 |
| 3. | ₹95,227/- | 15.07.2017 | 72963 |
| 4. | ₹18,505/- | 15.12.2017 | 13329 |
| 5. | ₹3,06,876/- | 15.12.2017 | 221043 |
| 6. | ₹2,78,505/- | 08.02.2018 | 196012 |
| | Total= ₹7,94,340/- | | ₹ 5,77,424/- |
| Total amount to be refunded by respondent to complainant = ₹7,94,340/- + ₹ 5,77,424 /-=13,71,764 | | | |

It is pertinent to mention here that complainant in his complaint is claiming amount of Rs 55,578/- paid on 30.05.2017 , Rs 39,649/- paid on 30.05.2017 and Rs 95,227/- paid on 09.07.2017 whereas in the statement issued by bank the dates are different (as mentioned above in table). No documentary evidence for the dates claimed by complainant has been submitted. In absence of

documentary evidence, the dates are taken from the statement issued by bank as reproduced above in table for calculation of interest.

29. Further, the complainant is seeking compensation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL 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 compensation.

## I. DIRECTIONS OF THE AUTHORITY

30. 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:

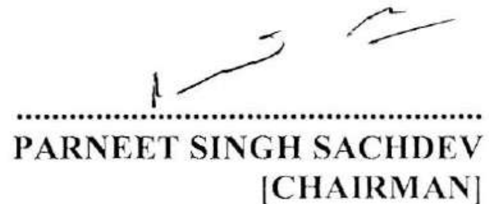
(i) Respondent is directed to refund the entire amount of ₹7,94,340/- + ₹ 5,77,424/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(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.

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

CHANDER SHEKHAR
[MEMBER]

NADIM AKHTAR
[MEMBER]



PARNEET SINGH SACHDEV
[CHAIRMAN]