



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	81 of 2022
Date of filing:	31.01.2022
Date of first hearing:	15.03.2022
Date of decision:	22.10.2024

Bindu Gaddh W/o Rajesh Gaddh
R/o House no. 189, Shastri Colony,
Yamunanagar- 135001

....COMPLAINANT

VERSUS

M/ Ansal Properties & Infrastructure Ltd,
Office: 115 Ansal Bhawan ,16 K G Marg
New Delhi 110001

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member
 Chander Shekhar Member

Present: Adv Sudeep, learned counsel for the complainant through video
conference.

Adv Sunny Tyagi, learned counsel for the respondent through video
conference.

Rathee

This order shall supersede the earlier order in the captioned complaint uploaded today. (Note: last line of direction 15 (1) last page of earlier order deleted vide this order)
Rathee *Chander*

ORDER:

1. Present complaint has been filed on 31.01.2022 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 fulfill 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 unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Green Escape Apartments, Phase-II, Sonipat.
2.	Flat no.	0102-17-903
3.	Area	1148 sq. ft.
4.	RERA registered/not	Registered-IHRERA-PKL-SNP-



	registered	173-2019 dated 30.10.2019
5.	Date of builder buyer agreement	No Builder Buyer Agreement executed
6.	Basic sale price	Rs. 19,51,600/-
7.	Amount paid by complainant	Rs. 14,18,629/-
8.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

3. That the case of the complainant is that she had booked a flat in respondent's residential project "Green Escape Apartments, phase-II Sonipat" by paying an amount of ₹ 240022.45/- on 30.09.2011. Till date no builder buyer agreement has been executed with the complainant.
4. Basic sale consideration of the said flat was Rs. 19,51,600/-. Against said amount, complainant has paid an amount of Rs. 14,18,629/-. Respondent through Asheem Sharma representative of respondent company had offered another alternative unit under different project without giving any size, location etc of the unit. Till date, respondent had neither handed over possession nor had returned the amount paid to the complainant. The promoter cannot indefinitely defer the delivery of possession after

receiving the substantial amount. The promoter is duty bound to deliver the possession within reasonable time.

5. That, further because of inordinate delay in completion of the project the respondent may kindly be directed to either handover possession along with delay interest or refund the deposited amount, along with the prescribe rate of interest, on amount deposited from their respective deposits till realization.

C. RELIEF SOUGHT

6. In view of the facts mentioned above, the complainant prays for the following relief(s):-

- i) To direct respondent to handover possession along with delay interest or refund amount of ₹ 14,18,629/- paid towards allotted residential Flat/Unit.
- ii) Compensation on account of escalations in land cost plus actually applicable stamp duty, rental burden, escalation in construction cost and mental agony and hardship to be filed with A.O. separately.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 21.06.2022 pleading therein:


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7. Present complaint is not maintainable as this Authority has no jurisdiction to entertain this complaint as the complainant has not come with clean hands and has concealed the material fact from this Hon'ble Authority.
8. That the Real Estate (Regulation and Development) has been made fully operational with effect from 1st of May 2017. In the State of Haryana, Haryana Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 28.07.2017. At this stage it is pertinent to submit that any new enactment of laws are to be applied prospectively as held by the Hon'ble Supreme Court in no of cases, in particular, in the matter of '**CIT vs. Vatika Township (P) Ltd**', it has been held that the new legislation ought not to change the character of any past transactions carried out upon the faith of the then existing law. In fact, it is well settled law that the retrospective operation of statute may introduce such element of unreasonableness as was held in State of **WB us. SC Bose (1954SCR 5787)** and **Express Newspapers P Ltd us. UOI /1959 SCR 12**). Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively. That it is further respectfully submitted that, recently in the matter of **Neel Kamal Realtor Suburban (P) Ltd. Vs. UOI &Ors.** The Hon'ble High Court of Judicature at Bombay, held that the provisions of RERA are retroactive in nature and not retrospective.



G. Attree

9. That the complainant has not filed the present complaint in proper form and the same is not as per the provisions of The Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of complaints), Regulations, 2018.
10. Respondent at para 10 of reply stated that respondents were unable to construct the unit due to financial crunch and reasons beyond the control of the respondent. Under these circumstances the respondent had earlier offered an alternative plot in Ananad Lok, Sonapat to the complainant in lieu of the present unit. Now respondent is ready to offer an alternate under construction unit to complainant in Green Escape, Sonapat and accordingly, adjust the payment by her in the unit.
11. That in the reply Respondent denies each and every averment or allegation made by the complainant, in the complaint.

E. ISSUES FOR ADJUDICATION

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

F. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT



13. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes and orders as follows:

- (i) Respondent has stated that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of



the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected.

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be



prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

- (ii) As per merits of the case, complainant is seeking both reliefs, i.e. of possession along with delay interest or refund of paid amount along with interest. In this regard, it is pertinent to mention that various hearings have taken place since filing of the complaint in year 2022, earlier respondent had sought time to offer an alternative unit to complainant however vide last hearing dated 09.07.2024 respondent had denied to offer any alternative unit to complainant, hence complainant opted for relief of refund along with interest on the paid amount. Accordingly, in this regard reference is made to section 18 of the RERA Act, 2016 which deals with "Return of amount and compensation". Section 18 of RERA Act, 2016 is reproduced below:

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this



behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"

(iii) In the present complaint, it is an admitted fact that no builder buyer agreement has been executed between parties till date. However, respondent had accepted an amount of ₹ 14,18,629 from the year 2011-2014 from the complainant, However till date respondent had neither handed over possession of the flat nor returned the paid amount. Infact till date no Builder Buyer Agreement has been executed between parties, substantial part of the alleged basic sale price stands paid by the complainant in year 2011-2014. In absence of a Builder Buyer Agreement deemed date of a possession cannot be ascertained. Thus, Authority deems it appropriate to refer to order of the **Hon'ble Apex Court passed titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure), 2017, STPL 4215 SC** and anr for reckoning the deemed date of possession of the date of booking.

Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there 10 was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the



facts and circumstances of this case. a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?

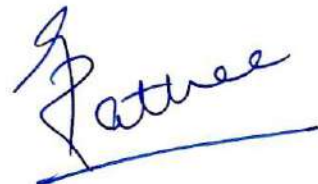
Hence, it could be presumed that respondent was under an obligation to deliver possession maximum by year 2014. Since no possession has been handed over till date, the complainant filed the present complaint on 31.01.2022 expressing her intention to not to continue with the project the respondent.

- (iv) In this regard, on the other hand respondent has taken a defence that delay in construction has been caused due to financial crunches. Authority observes that the complainant had paid an amount of Rs. 14,18,629/- out of the BSP of Rs. 19,51,600/- from year 2011-2014. Thus, there does not appear any defaulter payment on the part of complainant. In such circumstances, the Authority has no hesitation in stating that in view of the facts of the case financial crunches could have occurred only if the money paid by the allottees was misappropriated by the



respondent/promoter. Further, the plea of the respondent that project could not be completed due to reasons beyond control of promoter, is very general statement with no support, therefore, not tenable.

- (v) In such circumstances where the respondent should have handed over possession way back in year 2014 and the project is neither complete nor likely to be completed within reasonable time and extraordinary delay has already been caused from the due date of offer of possession, the complainant cannot be forced to wait for indefinite time for completion of project. As on date, the complainant is an aggrieved person who has not been handed over possession of the flat as per agreement of sale. The cause of action, i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force. There is a case of breach of contract by the respondent; therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract.
- (vi) Factual position reveals that respondent company is not in a position to deliver possession of booked unit. In the relief clause at page 9 of the complaint, complainant had claimed refund of Rs. 14,18,629/- and the proof of payment has been placed on record by complainant vide application dated 08.02.2023, wherein it is stated that amount of ₹ 14,19,303/- stands paid to respondent. Therefore amount of Rs. 14,19,303/- is liable to be refunded. Complainant/allottee, in exercise of their right under the provisions of this Act has demanded refund of the



amount paid by her. In this regard, Section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, he shall be liable on demand to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest, at such rate as may be prescribed.

- (vii) Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" 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.

(viii) This project is already delayed by several years and respondent had not shown any sign of its completion in near future, therefore, the Authority finds it to be a fit case for allowing refund in favour of complainants. The complainant will be entitled to refund of the paid amount from the dates of various payments 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;

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

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“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”..”

- (ix) Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 22.10.2024 is 11.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1%.
- (x) Hence, Authority directs respondent to pay refund to the complainants on account of failure in timely delivery of possession 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 11.1% (9.10% + 2.00%) from the date of various payments till actual realization of the amount.
- (xi) 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 22.10.2024 at the rate of 11.1% and said amount works out to ₹1889485/-. Complainant will be entitled to further interest on the paid amount till realization beginning from 23.10.2024 at the rate of 11.1%:



Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 15.10.2024 (in ₹)
1.	1,00,089/-	14.10.2011	144824/-
2.	1,40,129/-	17.01.2012	198712/-
3.	1,39,804/-	05.02.2012	197443/-
4.	86,540/-	05.05.2012	119851/-
5.	2,225/-	05.05.2012	3081/-
6.	74,412/-	05.05.2012	103054/-
7.	75,108/-	11.03.2014	88600/-
8.	85,845/-	11.03.2014	101266/-
9.	34,440/-	27.01.2012	48733/-
10.	34,440/-	05.05.2012	47696/-
11.	1,03,320/-	11.03.2014	121881/-
12.	34,440/-	11.03.2014	40627/-
13.	1,37,760/-	11.03.2014	162507/-
14.	62,500/-	25.05.2012	86177/-
15.	62,500/-	25.05.2012	86177/-
16.	42/-	05.05.2012	58/-



17.	4200/-	05.05.2012	5817/-
18.	4324/-	05.05.2012	5988/-
19.	35,000/-	05.05.2012	48472/-
20.	63,140/-	27.01.2012	89344/-
21.	1,26,280/-	25.05.2012	174119/-
22.	12,765/-	11.03.2014	15058/-
Total:	14,19,303/-		1889485/-

14. Lastly, at page no. 9 of complaint book, complainant states that complainant is seeking compensation on account of escalations in land cost plus actually applicable stamp duty, rental burden, escalation in construction cost and mental agony and hardship to be filed with A.O. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal




expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. DIRECTIONS OF THE AUTHORITY

15.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 ₹ 1889485/- (till date of order i.e 22.10.2024) to the complainant.
- (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.

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


.....
CHANDER SHEKHAR
[MEMBER]


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



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2. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

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3. That the case of the complainant is that she had booked a flat in respondent's residential project "Green Escape Apartments, phase-II Sonipat" by paying an amount of ₹ 240022.45/- on 30.09.2011. Till date no builder buyer agreement has been executed with the complainant.
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the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected.

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be



prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

- (ii) As per merits of the case, complainant is seeking both reliefs, i.e. of possession along with delay interest or refund of paid amount along with interest. In this regard, it is pertinent to mention that various hearings have taken place since filing of the complaint in year 2022. Earlier respondent had sought time to offer an alternative unit to complainant however vide last hearing dated 09.07.2024 respondent had denied to offer any alternative unit to complainant, hence complainant opted for relief of refund along with interest on the paid amount. Accordingly, in this regard reference is made to section 18 of the RERA Act, 2016 which deals with "Return of amount and compensation". Section 18 of RERA Act, 2016 is reproduced below:

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this



behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"

(iii) In the present complaint, it is an admitted fact that no builder buyer agreement has been executed between parties till date. However, respondent had accepted an amount of ₹ 14,18,629 from the year 2011-2014 from the complainant, However till date respondent had neither handed over possession of the flat nor returned the paid amount. Infact till date no Builder Buyer Agreement has been executed between parties, substantial part of the alleged basic sale price stands paid by the complainant in year 2011-2014. In absence of a Builder Buyer Agreement deemed date of a possession cannot be ascertained. Thus, Authority deems it appropriate to refer to order of the **Hon'ble Apex Court passed titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure), 2017, STPL 4215 SC** and anr for reckoning the deemed date of possession of the date of booking.

Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there 10 was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the

A handwritten signature in blue ink, appearing to read 'J. Jathar', is written over a horizontal blue line.

facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?

Hence, it could be presumed that respondent was under an obligation to deliver possession maximum by year 2014. Since no possession has been handed over till date, the complainant filed the present complaint on 31.01.2022 expressing her intention to not to continue with the project the respondent.

- (iv) In this regard, on the other hand respondent has taken a defence that delay in construction has been caused due to financial crunches. Authority observes that the complainant had paid an amount of Rs. 14,18,629/- out of the BSP of Rs. 19,51,600/- from year 2011-2014. Thus, there does not appear any defaulter payment on the part of complainant. In such circumstances, the Authority has no hesitation in stating that in view of the facts of the case financial crunches could have occurred only if the money paid by the allottees was misappropriated by the



respondent/promoter. Further, the plea of the respondent that project could not be completed due to reasons beyond control of promoter, is very general statement with no support, therefore, not tenable.

- (v) In such circumstances where the respondent should have handed over possession way back in year 2014 and the project is neither complete nor likely to be completed within reasonable time and extraordinary delay has already been caused from the due date of offer of possession, the complainant cannot be forced to wait for indefinite time for completion of project. As on date, the complainant is an aggrieved person who has not been handed over possession of the flat as per agreement of sale. The cause of action, i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force. There is a case of breach of contract by the respondent; therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract.
- (vi) Factual position reveals that respondent company is not in a position to deliver possession of booked unit. In the relief clause at page 9 of the complaint, complainant had claimed refund of Rs. 14,18,629/- and the proof of payment has been placed on record by complainant vide application dated 08.02.2023, wherein it is stated that amount of ₹ 14,19,303/- stands paid to respondent. Therefore amount of Rs. 14,19,303/- is liable to be refunded. Complainant/allottee, in exercise of their right under the provisions of this Act has demanded refund of the



amount paid by her. In this regard, Section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, he shall be liable on demand to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest, at such rate as may be prescribed.

- (vii) Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" 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.

- (viii) This project is already delayed by several years and respondent had not shown any sign of its completion in near future, therefore, the Authority finds it to be a fit case for allowing refund in favour of complainants. The complainant will be entitled to refund of the paid amount from the dates of various payments 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;

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 (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”..”

- (ix) Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 22.10.2024 is 11.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1%.
- (x) Hence, Authority directs respondent to pay refund to the complainants on account of failure in timely delivery of possession 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 11.1% (9.10% + 2.00%) from the date of various payments till actual realization of the amount.
- (xi) 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 22.10.2024 at the rate of 11.1% and said amount works out to ₹ 1889485/-. Complainant will be entitled to further interest on the paid amount till realization beginning from 23.10.2024 at the rate of 11.1%:



Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 15.10.2024 (in ₹)
1.	1,00,089/-	14.10.2011	144824/-
2.	1,40,129/-	17.01.2012	198712/-
3.	1,39,804/-	05.02.2012	197443/-
4.	86,540/-	05.05.2012	119851/-
5.	2,225/-	05.05.2012	3081/-
6.	74,412/-	05.05.2012	103054/-
7.	75,108/-	11.03.2014	88600/-
8.	85,845/-	11.03.2014	101266/-
9.	34,440/-	27.01.2012	48733/-
10.	34,440/-	05.05.2012	47696/-
11.	1,03,320/-	11.03.2014	121881/-
12.	34,440/-	11.03.2014	40627/-
13.	1,37,760/-	11.03.2014	162507/-
14.	62,500/-	25.05.2012	86177/-
15.	62,500/-	25.05.2012	86177/-
16.	42/-	05.05.2012	58/-



17.	4200/-	05.05.2012	5817/-
18.	4324/-	05.05.2012	5988/-
19.	35,000/-	05.05.2012	48472/-
20.	63,140/-	27.01.2012	89344/-
21.	1,26,280/-	25.05.2012	174119/-
22.	12,765/-	11.03.2014	15058/-
Total:	14,19,303/-		1889485/-

14. Lastly, at page no. 9 of complaint book, complainant states that complainant is seeking compensation on account of escalations in land cost plus actually applicable stamp duty, rental burden, escalation in construction cost and mental agony and hardship to be filed with A.O. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal



expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

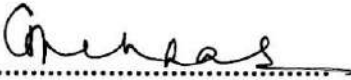
G. DIRECTIONS OF THE AUTHORITY

15. 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 ₹ 1889485/- (till date of order i.e 22.10.2024) to the complainant, and pay further interest beginning from 23.10.2024 till actual realization of the amount at the rate of 11.1%.

(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.

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


.....
CHANDER SHEKHAR
[MEMBER]


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